SUPREME COURT, U.S.
OCT 25 1973

IN THE

SUPREME COURT OF THE UNITED STATES

No. 73-691

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation and JAMES A. WRIGHT, individually and as the President, sole shareholder and Director thereof,

Petitioners,

v.

ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, HAROLD O. SWANK, EDWARD WEAVER, ROBERT G. WESSEL, PATRICK F. KAIN, FRANKLIN D. YODER, ROBERT G. BILSTEIN, R.F. SONDAG, DOUGLAS E. WADE, individually and as employees of the Illinois Department of Public Aid and Health,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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No.

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Petitioners,

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ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, HAROLD O. SWANK, EDWARD WEAVER, ROBERT G. WESSEL, PATRICK F. KAIN, FRANKLIN D. YODER, ROBERT G. BILSTEIN, R.F. SONDAG, DOUGLAS E. WADE, individually and as employees of the Illinois Department of Public Aid and Health,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioners, HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation and JAMES A. WRIGHT, individually and as President, sole shareholder and Director thereof, prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Seventh Circuit rendered on these proceedings on July 10, 1973.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit was rendered on July 10, 1973, Case No. 73-1242, a copy of said opinion is attached as Appendix 1-4a.

A petition for a rehearing was denied on August 24, 1973, Appendix 1b.

A stay of the Mandate pending rehearing en banc, and if denied that the stay of Mandate continue pending application to the Supreme Court of the United States for a Writ of Certiorari, only the stay pending rehearing en banc was granted on August 29, 1973, Appendix 1c.

The rehearing en banc was denied on September 12, Appendix 1d.

A stay of the Mandate pending application for a Writ of Certiorari to the Supreme Court of the United States was denied without prejudice to the right to renew said motion after the rehearing en banc is ruled on. September 12, 1973, Appendix 1e.

A stay of the Mandate pending petition to the Supreme Court of the United States for a Writ of Certiorari was denied September 18, 1973, Appendix 1f.

A motion to review the appeal was denied on September 21, 1973, Appendix 1g.

JURISDICTION

Civil Rights Act 1871 and 1964
Title 28 U.S. Code Section 1343
Title 42 U.S. Code Sections 1981, 1983, 1985, 1986, 2000d
Fifth Amendment U.S. Constitution
Fourteenth Amendment U.S. Constitution

This petition for Writ of Certiorari is timely. The United States Court of Appeals for the Seventh Circuit has denied a stay of the Mandate of its decision to allow time for the petition of Certiorari review. The jurisdiction of this Court is invoked under the rules of the Supreme Court of the United States and 28 U.S.C. Section 1254.

CONSTITUTION OF THE STATE OF ILLINOIS

ARTICLE I – BILL OF RIGHTS

Section 1. INHERENT AND INALIENABLE RIGHTS

"All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men deriving their just powers from the consent of the governed."

Section 2. DUE PROCESS AND EQUAL PROTECTION

"No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

Section 12. RIGHT TO REMEDY AND JUSTICE

"Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

ARTICLE V. THE EXECUTIVE

Section 15. ATTORNEY GENERAL – DUTIES

"The Attorney General shall be the legal officer of the State and shall have the duties and powers that may be prescribed by law."

Note: The Attorney General's duties do not include illegal criminal seizures of private property as he did to the Petitioners (violating Section 2 above) *without affording hearings,* the attorney general and the defendants' conduct are clear subversion of the State of Illinois and United States Constitution. See Appendix 20h & 24h.

Pursuant to Rule 8 of Federal Rules of Civil Procedure, the Defendants' failure to deny among other things the fact that hearings were not afforded the Plaintiffs as Section 2 of the Illinois Constitution and 14th Amendment of the U.S. Constitution mandates serves as a direct act of admissible guilt.

RULES AND REGULATIONS

Illinois Clinical Laboratory Act Rules and Regulations in pertinent part provides as follows:

1.23 – *General Fee for INITIAL and for RENEWAL License* (See Appendix 4h)

An applicant for an original (Mean INITIAL) license shall be accompanied by a license fee of $100.00.

An application for RENEWAL of license shall be accompanied by renewal fee of $50.00.

If during the calendar year in which the license or renewal thereto has been issued, there is a change of *director, location,* owner or name of the laboratory or blood bank, the Department shall be notified prior to such change. If the contemplated change is in compliance with this Act and regulations pertaining thereto, the fee for such new license shall be $50.00.

State Operated Proficiency Testing Program (See Appendix 4-7h)

NEW LABORATORY – will receive at least 20-25 specimens.

Until approval is granted, an on-site inspection including performance evaluation is necessary prior to approval.

OLD LABORATORY – once approval is granted, the laboratory will receive per year 10 specimens.

If a laboratory moves and keeps its personnel intact, approval will continue. If a substantial change in personnel result by the move, the laboratory at the new location must earn approval as a new laboratory. The Bureau of Laboratory Evaluation must be informed immediately in writing, of all change in *location and personnel.*

Section 8-102 Hearing Prior Revocation of a License or Refusal to Renew a License (See Appendix 8-9h)

"... Before denying an application or refusing to renew a license or revoking a license, the Department shall notify the applicant in writing of a hearing to be held thereon."

Section 8-103 Necessity of Hearing Prior Revocation of a License or Refusing to Renew.

"... The hearing officer shall permit the applicant to appear in person and to be represented by counsel at the hearing at which time the applicant or licensee shall be afforded an opportunity to present all relevant matter in support of his application for license or renewal of license or in resisting the revocation thereof."

Section 8-107 *Upon the revocation of his license,* a licensee shall be required to surrender his license to the Department (see Appendix 27-28h), and upon his failure or refusal to do so the Department shall have the right to seize the same.

The final judgment of the U.S. Court of Appeals for the Seventh Circuit dated July 10, 1973, stated inter alia

"The appellants' brief, prepared by plaintiff James A. Wright, acting pro se, does not contain a specific citation of the new rules, regulation, and

statute to which the plaintiff laboratory would be subject under the 'new' classification." (See Appendix 1-4a)

In response to the above statement the Petitioner knows of no new rules, regulations or statute to which the laboratory would be subjected under except the rules for proficiency testing. (See Appendix 4-7h)

The Petitioners were certified in 1968 after meeting all qualifications with Education and passing the PHS-sponsored Written Examination which qualifies the petitioner for life to Direct any laboratory under the Medicare Program in any State of the U.S. only subject to different State rules and regulations and petitioner have passed all Examinations Written and practical administered to him by the State of Illinois Department of Public Health in 1967.

QUESTIONS PRESENTED

The questions presented are: Whether the Trial Judge abused his discretion in denying petitioners motion for the preliminary injunction in view of great and lasting irreparable injury and harm, and 13 Counts of Unconstitutional Deprivation of petitioners' Constitutional Rights, in violation of the 5th and 14th Amendments of the U.S. Constitution, 42 U.S.C. Section 1983, 2000d; Whether the Trial Judge understood the issue before the court or appreciated the complex and extraordinary legal position of the petitioners; Whether the Trial Judge departed from the Principles and Rules of Equity and abused his discretion in denying the above motion for the preliminary injunction, when it was brought to his attention that the defendants were endorsing the petitioners (Hyde Park Medical Laboratory, Inc.) checks submitted for renewal of the license, which

have been renewed 1969, 1970, 1971, and later said defendants stated that on or about August 13, 1971, it came to their attention that Petitioners (Hyde Park Medical Laboratory Inc.) was incorporated and revoked the license; Whether the Trial Judge ignored the competent undisputed evidence presented of Thirteen Counts of Unconstitutional Deprivations of the petitioners' Constitutional Rights, violating 28 U.S.C. Section 1343, 42 U.S.C. Sections 1981, 1983, 1985, 1986, 2000d, Fifth and Fourteenth Amendments of the U.S. Constitution.

STATEMENT OF FACTS

The petitioner is an Alien Refugee from a Communist Country. He was promised freedom from injustices of this type if and when he became a Citizen of the United States of America. Now that he is a Naturalized Citizen he willingly invested all his monies (Capital) which he brought into this Country, established his own business enterprise relying on the promise of freedom and equal justice, but everything until now have proven to the contrary. He has been financially drained by attorneys, laboratory maintenance expenses, and is unable to pay for the services of an Attorney, so he must represent himself. He is suffering illegal and criminal seizure of his property by the Defendants and Defense acting under color of the State Government. These methods of illegal criminal seizure is the same kind of criminal seizure and methods of threat and fear from which the petitioners have escaped.

The following will demonstrate how the petitioners' entire Capital brought into this Country and invested in a private enterprise just as it began to produce in the form of account receivable which were kept in trust by the Defendants; those receivables were for the purpose of

repaying loans, equipments received on credit and to recover some of the investment, but these account receivables (cash) have been illegally seized by the defendants and defense. Also the license have been fraudulently revoked. (See Appendix 24-28h, 31-32h, 44-47h, 53-57h).

Petitioners asserted their rights guaranteed by the U.S. Constitution and also explained that they had contracts agreements, but all rights were denied and contracts agreements ignored. (See Appendix 1-2h, 21-22h) Petitioners were faced with strong and severe illegal conspiracy and dictatorial criminal oppression similar to the kind escaped from. The defendants attempted to bring false and illegal criminal prosectuion against petitioners without affording hearings, the illegal attempt failed, but constant illegal threats and harrassment still remains. (See Appendix 48-49h)

Petitioners turned to the Trial Judge for relief in the form of a preliminary injunction and possibly to restrain defendants from further engaging in such wrongs, but the Trial Judge refused to grant relief.

Fraud of magnitude commonly known as perjury, were committed by the defendants and defense, Appendix and Briefs for the *Defendants-Appellees,* pages 7, 8, 11 (A. 11), (A. 15) docketed in the courts. (See Appendix 13-19h vs. 27-28h and pages 12, 13 & 14 of this Petition.

Petitioners were forced by the Trial Judge to be represented by counsel they dismissed February 7, 1973, so whatever agreement might have been made, if any, by said counsel and the Defendants were not known or in the interest of the petitioners. (See Appendix 50-53h) Petitioners were told by the Trial Judge to send a total of $100 and an application, the petitioners complied and were under the impression that the old license was not to

continue being revoked, and that the old license was being renewed in order to preserve the *status quo*, pending the court proceeding on the merits.

When it was discovered that an Initial (Original) license would be issued, petitioners demonstrated to the Trial Judge in chambers that an Initial License would further violate their Civil Rights since it would subject them to different treatment that is a double standard requirement for participation in the Federally-Assisted programs, in violation of the Civil Rights Act of 1964 and 42 U.S.C. Section 2000d. (See Appendix 4-7h)

THE FOLLOWING IS CHRONOLOGICALLY STATED:

On March 19, 1969, at 9 a.m. a Site-Survey was conducted and the Defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH was informed of the actual Incorporation for tax purposes only, in addition a copy of the letter of February 1, 1969, which was mailed prior to incorporation notifying the aforesaid defendant of the proposed incorporation of the petitioners was shown. (See Appendix 1-4a vs. 13h)

Subsequent to the March 19, 1969, Site-Survey and all information given the renewed license was issued effective January 1, 1969 and expiring December 31, 1969. (See Appendix 15-16h vs. 1-4a)

The City of Chicago Board of Health after a similar notification and inspection as the one stated above was held a renewed license with the name Incorporated since 1969 was issued and the same was posted in a conspicuous place for observations of inspectors and the public. (See Appendix 14h)

On July 14, and 30, 1971, the defendant ILLINOIS DEPARTMENT OF PUBLIC AID, illegally and violating fiduciary obligations withheld substantial sum of monies

due and owing for services rendered under contract; suspended participation in the Medicaid Program; initiated false and illegal investigations of the petitioners and their clients and failed to provide hearings prior to the aforesaid illegal and criminal conduct. (See Appendix 1-2h, 20-24h, 44-49h, 53-57h)

On or about August 13, 1971, the Defendant ILLINOIS DEPARTMENT OF PUBLIC AID, induced the defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH to join in furtherance of the conspiracy to criminally violate the laws and fraudulently deprive the petitioners of their Properties without due process of law violating the 5th and 14th Amendment of the Constitution of the United States, 28 USCA Section 1343, 42 USCA Sections 1983, 1985, 1986. The defendant ILLINOIS DEPARTMENT OF PUBLIC AID brought to the attention of the defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH *a matter well known and for which approval have been granted during the years 1969, 1970, 1971,* that the Petitioners HYDE PARK MEDICAL LABORATORY INC., was incorporated on February 6, 1969. (See Appendix 13-19h)

On August 20, 1971, the defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH responded immediately joining the conspiracy and in furtherance of same appeared in disguise concealing prior knowledge of the petitioners incorporation revoked the renewed license fraudulently, after receiving and endorsing the applications in 1969, 1970, & 1971 of the existing corporation. (See Appendix 12-13h, 15-19h, 27-28h)

The fraudulent revocation of the renewed license and illegal demand for an Initial (Original) license as a new applicant which cannot participate in Medicare or in Medicaid programs, terminated Medicare participation, contracts, all possibilities of negotiations and reinstate-

ment to the Medicare and Medicaid programs, and also increased the difficulty of collecting monies entrusted to the custody of the defendant ILLINOIS DEPARTMENT OF PUBLIC AID for services performed under contract and withheld illegally by said defendant without affording a hearing. (See Appendix 1-2h, 3-7h, 21-22h, 42-47h)

On August 25, 1971, Attorneys for the petitioners in a letter requested that the defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH, inter alia, "... *not treat this license as if it were a new applicant*" since according to Rules 1.23 said defendant had already approved the corporation in 1969. (See Appendix 31-32h, 4h) The Attorneys further pointed out to the aforesaid Defendant that since said Defendant had knowledge and had already endorsed the corporation they should add the word "Inc" to the already renewed license certificate according to *their* February 12, 1971, communication relating to the latest site survey. (See Appendix 17-18h)

The abbreviated name "Hyde Park Medical *LAB*" is an act of omission constituting negligence which have been the custom and practice of the defendants in issuing the petitioners license and on said negligence formed their basis for furtherance of the conspiracy. See license issued January 1, 1971. (See Appendix 12h)

Defendants-Appellees in their briefs pages 7 and 8 of June 11, 1973, further ignoring all request by the petitioners' attorneys insisted in their continuous illegal and criminal demands since August 20, 1971, that the petitioners apply for an Initial (mean Original) new license, which revokes the renewed license and all rights and privileges to which the renewed license is entitled. (See Appendix 1-7h, 21-22h, 27-28h)

THE FOLLOWING ARE PROOF OF FRAUD COMMITTED BY DEFENDANTS AND DOCKETED IN BOTH THE DISTRICT AND THE U.S. COURT OF APPEALS

Statements below were filed under oath in the aforesaid courts which is a deliberate fraud commonly called perjury in both legal and lay language, since the Defendants were *notified* about the *corporation* were *endorsing* its *checks since 1969* and further proof of their knowledge and acceptance of the existing corporation will be shown in the following: (See Appendix 13-18h, 33-39h)

BRIEFS FOR THE DEFENDANTS-APPELLEES

Page 7 – When the Department of Public Health *discovered* that Mr. Wright had incorporated his business, Mr. Wright was notified by letter dated August 20, 1971 . . .

Page 8 – the *only* difference between renewal of an old license and application for a new license is that an additional $50 is required for the latter.

. . . Mr. Wright's license was never revoked . . .

Page 11 – . . . the license the plaintiffs are apparently *seeking* has been mailed to plaintiffs . . . (A. 11) The named plaintiff herein, Hyde Park Medical Laboratory Inc., is not at present and *never* was registered with or license by the State of Illinois Department of Public Health or any other branch or department of the State of Illinois as "Clinical Laboratory" or "laboratory."

(A. 15) 10. On or about August 13, 1971, the Defendant Illinois Department of Public Health received a report from the Illinois Department of Public Aid that the Hyde Park Medical Laboratory was incorporated on February 6, 1969."

There are no reasons to doubt that the above statements were fraudulent and were made to confuse the courts, and have so received the intended wrong conclusion. The following will further prove that the statements are fraudulent:

Incorporated February 6, 1969, Illinois Secretary of State, State of Illinois Certificate No. 36163 (33-39h)

City of Chicago Board of Health 1969 Certificate No. 115 (14h) approving the Inc.

Illinois Department of Public Health Certificate No. 1921 (12h) Hyde Park Medical Lab.

Illinois Department of Public Health Correspondence to Hyde Park Medical Laboratory Inc., and James A. Wright continued certification, February 12, 1971. (17-18h)

Illinois Department of Public Health prior registrations (15-16h) Hyde Park Medical Laboratories Inc. (endorsed)

Check dated 1969 No. 662 amount $50 submitted as application for renewal of the incorporated laboratory license fully acknowledged and endorsed accordingly vs. U.S. Court of Appeals for the Seventh Circuit Order of July 10, 1973 (1-4a)

Name of the owners	HYDE PARK MEDICAL LABORATORY, INC., AND JAMES A. WRIGHT, DIRECTOR, PRESIDENT AND SOLE SHAREHOLDER
To whom paid	ILLINOIS DEPARTMENT OF PUBLIC HEALTH
Purpose of check	FOR RENEWAL OF THE LICENSE ISSUED TO HYDE PARK MEDICAL LABORATORY INC., AND JAMES A. WRIGHT, DIRECTOR, PRESIDENT AND SOLE SHAREHOLDER

Endorsed by	ILLINOIS DEPARTMENT OF PUBLIC HEALTH FRANKLIN D. YODER, M.D. DIRECTOR CLINICAL LABORATORY & BLOOD BANK LICENSE FEES

Check dated 1970 No. 1092 Amount $50 submitted as application for renewal of the incorporated laboratory license fully acknowledged and endorsed accordingly vs. U.S. Court of Appeals for the Seventh Circuit Order of July 10, 1973. (16h, 1-4a)

Name of the owners	HYDE PARK MEDICAL LABORATORY INC., AND JAMES A. WRIGHT, DIRECTOR, PRESIDENT AND SOLE SHAREHOLDER
To whom paid	ILLINOIS DEPARTMENT OF PUBLIC HEALTH
Purpose of check	FOR RENEWAL OF THE LICENSE ISSUED TO HYDE PARK MEDICAL LABORATORY INC., AND JAMES A. WRIGHT, DIRECTOR, PRESIDENT AND SOLE SHAREHOLDER
Endorsed by	ILLINOIS DEPARTMENT OF PUBLIC HEALTH FRANKLIN D. YODER, M.D. DIRECTOR CLINICAL LABORATORY & BLOOD BANK LICENSE FEES

February 12, 1971, the defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH after the customary annual site survey of January 20, 1971, informed the Medicare with original document to the petitioners which further confirms prior knowledge of the corporation by use of the words "INC." stated inter alia,

"James A. Wright
Director
Hyde Park Medical Laboratory *INC.* . . . (17-18h)
cc: Social Security Administration."

REASON FOR GRANTING THE WRIT

Petitioners are suffering great and lasting irreparable injury and harm caused by Thirteen Counts of Unconstitutional Deprivation of their Constitutional Rights, and if the Writ is not granted the petitioners will continue to suffer great and lasting irreparable harm and injury, by the illegal conduct of the defendants, some irreparable injury and harm not computable or recompensable with money damages.

There are also very important questions of Federal Law which should be settled by this Court.

ARGUMENT

POINT I

THE TRIAL JUDGE ABUSED HIS DISCRETION IN DENYING THE PETITIONERS' MOTION FOR THE PRELIMINARY INJUNCTION IN VIEW OF GREAT AND LASTING IRREPARABLE INJURY AND HARM, AND 13 COUNTS OF UNCONSTITUTIONAL DEPRIVATION OF PETITIONERS' CONSTITUTIONAL RIGHTS, IN VIOLATION OF THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION, 42 U.S.C. SECTION 1983, 2000d

This argument approaches the precise issue to be resolved in four parts which when considered conjunctively demonstrates clearly that the Trial Judge abused his discretion in denying petitioners motion. Petitioners respectfully show the following:

a. The petitioners did not fail to sustain the burden of proving the necessity and practicability of obtaining a preliminary injunction.

1. That they will suffer immediate irreparable injury if it is not granted.

2. That the balance of hardships and conveniences to each side weighs in their favor, and

3. That there is a reasonable likelihood of their success on the merits.

Mildland-Ross Corp. v. Sunbeam Equip. Corp., 326 F. Supp. 171, 173 (1970) *Saemann v Everest and Jennings*, 343 F. Supp 457 (1972).

Petitioners have on all three points introduced evidence, established and attempted to establish before the Trial Judge without so much the success of arousing his interest that petitioners would suffer immediate and irreparable injury unless they obtain a preliminary injunction. It is therefore contended that the Trial Judge departed from the use of sound legal discretion in denying such a motion.

The Trial Judge failed to see that rights were being destroyed by illegal act of thirteen Counts of Unconstitutional Deprivations of Constitutional Rights, Criminal violations of the laws were being committed by the Defendants' fraudulent statements being filed under oath and neither the District Court or the U.S. Courts of Appeals made any efforts to restrain such criminal act. Also the Trial Judge failed to weigh equities between parties and to determine that the petitioners would suffer more from denying an injunction, and that it was also error not to make findings of facts showing irreparable harm being suffered by the petitioners. If relief is not granted, great and lasting irreparable harm will continue during pendency of this trial. Also the petitioners condition supports granting the relief since they are sure to prevail on the merits of this case.

Further proof that the United States Courts of Appeals for the Seventh Circuit erroneously affirmed the Trial Court abuse of its discretion is supported by evidence in the records (42-47h, 53-57h) and further in *West Virginia*

Highlands Conservancy v. Island Creek Coal Company, 441 F.2d 232, 233 (4th Cir. 1971):

> "It is not necessary that applicant for preliminary injunction demonstrates an absolute right to relief it seeks in order to sustain issuance of such an injunction; *it need establish only probable right.*"

The petitioners have established more than probable right to the relief they seek, since Thirteen Counts of Unconstitutional Deprivation of Constitutional Rights (42-47h, 53-57h), great and lasting irreparable injury and harm were competently demonstrated and completely assured with such evidence to prevail on the merits of the case.

The petitioners have submitted competent evidence under oath and have shown proof that the Defendants making efforts to deny a part of the petitioners' complaint was fraudulent on the part of the Defendants and since the denial was made under oath the petitioners contend that the Defendants have committed perjury and their denial is a criminal offence, with the petitioners in perfect legal standing. The petitioners' competent evidence which entitled them to succeed ultimately on the merits by the aforesaid exposure of the fraudulent situations of the Defendants, it is further proven in *Bernard H. Goldman v. Henry's Drive-In Inc.*, 314 F.2d 162 (7th Cir. 1963):

> "Under law of Illinois, where defendant under oath denied all material allegations of complaint, burden was on plaintiff seeking preliminary injunction to offer competent evidence to establish that he was probably entitled to succeed ultimately on the merits."

that Petitioners are entitled to succeed on the merits.

For proof of the Defendants' fraudulent statements, see pages 12, 13, and 14 of this petition and 13-19h, 27-28h.

The opinions and decisions of the U.S. Court of Appeals for the Seventh Circuit, conflicts with this and other United States Courts of Appeals' opinions. Since this Court has stated the following with regards to injunctions in *United Transportation Union v. State Bar of Michigan,* 401 U.S. 576, 584 (1971):

> **"An injunction can issue only after plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant, if not enjoined, will engage in such conduct."**

The petitioners have clearly established competent undisputed evidence in the records (42-47h, 53-57h) that the Defendants' conduct are illegal and if not enjoined they will engage in further and greater illegal conduct.

This standard is set forth for example, in *Detroit Newspaper Publishers Ass'n v. Detroit Typographical Union No. 18, Intern, Typographical Union,* 471 F.2d 872, 873 (6th Cir. 1972):

> **"Where right is about to be destroyed or irreparable injured or great and lasting injury is about to be done by an illegal act court owes it to its suitors and its own principles to administer injunction, which is only remedy which law allows to prevent commission of such act."**

The petitioners' rights is being destroyed by illegal acts of the Defendants. (53-57h). The Defendants' illegal seizure of monies relied on by the petitioners to meet financial obligations promptly and thus maintain good credit relations, have severely been impaired creating irreparable harm not readily computable or re-compensable in money damages. (42-47h).

Relying on the evidence established in the records (42-47h, 53-57h) the petitioners will further prove that the United States Court of Appeals for the Seventh

Circuit and the Trial Court abuse of its discretion in denying the preliminary injunction which conflicts in opinion with *Capital City Gas Company v. Phillips Petroleum Company,* 373 F.2d 128 (2nd Cir. 1967):

> "Most significant condition which must be present to support granting of temporary injunction is showing that if relief is not granted, irreparable injury during pendency of trial will result."

After it have been clearly established in the records (42-47h, 53-57h) that if relief is not granted great and lasting irreparable injury will continue.

POINT II

THE TRIAL JUDGE NEVER UNDERSTOOD THE ISSUE BEFORE THE COURT OR APPRECIATED THE COMPLEX AND EXTRAORDINARY LEGAL POSITION OF THE PETITIONERS

The Trial Judge was confused and never understood the issue before the court or appreciated the complex and extraordinary legal position of the petitioners On page 40 of the transcript of the trial court proceedings the petitioners requested that they be allowed to operate the Medical Laboratory with Medicare and Medicaid pending the courts proceedings on the merits (50-53h) that is: (1) that the Defendant Illinois Department of Public Health be restrained from revoking the old license and that the old license be renewed; (2) that said Defendant recommend to Medicare in the usual manner the petitioners for continued participation in the Medicare program (3) that the Defendant Illinois Department of Public Aid be restrained from suspending petitioners participation in the Medical Assistance Program (Medicaid) (4) that said Defendant be further restrained from refusing to reimburse

for services performed and to be performed under contract (5) that the defendants be restrained from further committing a breach of contract (6) that all the above restraint be continued pending the court proceeding on the merits.

It was clearly established that the petitioners business relied solely on the dealings and relations with Medicare and Medicaid therefore a license without granting Medicare and Medicaid was of no value to the business. (1-2h, 21-22h, 27-28h). The competent evidence established by the petitioners clearly shows that the Defendants breached their obligation as agents by taking actions contrary to Fiduciary obligations of which the petitioners seeks and is entitled to have restraint (42-47h, 53-57h). This opinion proves the petitioners to be correct in *Howard P. LaBauve v. Brown & Root, Inc.*, 319 F.2d 582 (6th Cir. 1963):

> "Findings that defendant breached his obligation as an agent by taking action contrary to his fiduciary obligations, on which findings temporary order restraining defendant from continuing such action was based, were not clearly erroneous LSA-R.S. 23: 921."

It is contended that the Defendants should be restrained from such illegal seizure of private property. The petitioners are relying on this court to reverse the U.S. Courts of Appeals of the Seventh Circuit and the Trial Courts decisions because in view of the evidence presented here their decisions not only in conflicts with all other U.S. Courts of Appeals but with this Courts opinion on granting preliminary injunction. With Thirteen Counts of Unconstitutional Deprivations of Constitutional Rights (53-57h), proof of irreparable injury by revocation of the business license (27-28h, 42-47h) and the petitioners should not await any procedural steps perfecting plead-

ings or a full-blown trial, as explained fully in *United States v. Lynd*, 301 F.2d 818, 819 (5th Cir. 1962):

> "Temporary injunction is writ issued to protect rights of any person moving for it upon his making showing that he is entitled to it, and its grant need not await any procedural steps perfecting pleadings or any other formalities attendant upon full-blown trial."

Petitioners' relations with Physicians whose good realtions the business must depend on for existence, also the good relations of creditors, and dealers. Good reputation in the Community is another important factor. All these and other relations have been severely impaired, and these types of harm are not readily computable or recompensable in money damages. The discontinued business because of illegal act of the defendants, the loss of all income and profits are evidence that the petitioners have suffered irreparable injury and harm and are continuing to suffer great and lasting injury as a result of the illegal acts by the Defendants and this Court has set standards in regards to issuance of injunction: In *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 584 (1971), "An injunction can issue only after plaintiff has established that the Conduct sought to be enjoined is illegal and that the defendant, if not enjoined, will engage in such conduct." Revocation of the license; Suspension of Medicaid, Medicare, seizure of monies due and owing for services rendered under contract and kept in trust for the petitioners; failure to afford hearings violating the Due Process Clause of the 5th & 14th Amendments of the U.S. Constitution; further demonstrates the illegal acts which must be restrained (53-57h, 42-47h). An injunction is proper to prevent the threatened extinction of a business *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197, 1205 (2nd Cir. 1970), and to prevent disruption of a company's relationship with its dealers,

Bergen Drug Company, Inc. v. Park, Davis & Company, 307 F.2d 725, 728 (3rd Cir. 1962). We are satisfied with the showing of irreparable injury.

The petitioners request for preliminary injunction is preventive because the record shows that public Aid and Health are irreparably injuring Hyde Park Medical Laboratory, Inc., *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2nd. Cir. 1953) and the the court did *not abuse its discretion in granting* the preliminary injunction. The numerous cited authorities including the one above compentently establishes that the Trial Judge abused his discretion in denying the preliminary injunction. Further proof of abuse of discretion by the Trial Judge and decisions contrary to and in conflict with standard procedure for granting preliminary injunctions is shown in: *O.T. Chiaffitelli v. Dettmer Hospital, Inc.*, 437 F.2d 429 (6th Cir. 1971);

> "Complaint by psychiatrist, suing to compel county hospital and its board of governors to reinstate him as an active member of medical staff and for damages for refusal to renew privileges and other arbitrary and discriminatory actions, alleging that revocation of staff privileges was not in accordance with hospital rules, that rules provided inadequate standards for membership of medical staff and deprived psychiatrist of due process and equal protection and that he recieved only one day's notice of charges against him, was sufficient to state cause of action under Civil Rights Act of 1871. Fed. Rules Civ. Proc. rule 12(e), 28 U.S.C.A., 42 U.S.C.A. Section 1983 U.S.C.A. Const. Amends 5, 14."

The above action was reversed. Due to the similarity, the petitioners are relying on this court to have their case reversed and a preliminary injunction entered.

POINT III

THE TRIAL JUDGE DEPARTED FROM THE PRINCIPLES AND RULES OF EQUITY AND THUS ABUSED HIS DISCRETION IN DENYING THE ABOVE MOTION. WHEN IT WAS BROUGHT TO HIS ATTENTION THAT THE DEFENDANTS WERE ENDORSING THE PETITIONERS (HYDE PARK MEDICAL LABORATORY INC.), CHECKS SUBMITTED FOR RENEWAL OF THE LICENSE (15h, 16h) WHICH HAVE BEEN RENEWED 1969, 1970, 1971, AND LATER SAID DEFENDANTS STATED THAT ON OR ABOUT AUGUST 13, 1971, IT CAME TO THEIR ATTENTION THAT PETITIONERS (HYDE PARK MEDICAL LABORATORY INC.) WAS INCORPORATED AND SUDDENLY AND ABRUPTLY REVOKED ITS LICENSE.

The Trial Judge Departed from the principles and rules of equity and thus abused his discretion in denying the motion for the preliminary injunction.

It is the petitioners' contention that since competent undisputed evidence was established necessary to support granting the relief requested (42-47h, 53-57h) and the Trial Judge failed to grant such relief, but instead decided in favor of the Defendants. In view of the Defendants' fraudulent and illegal conduct, see pages 12, 13, 14 (13-19h, 27-28h) of this petition, and further, in view of the foregoing there is no doubt that the Trial Judge abused his discretion and the United States Court of Appeals for the Seventh Circuit affirmed erroneously. Therefore petitioners respectfully ask that both decisions be reversed and an injunction be ordered.

The Trial Judge further reaffirmed his position stating that 97½ per cent of what the petitioners asked for was granted by the defendants. The petitioners proved that an *Initial* (meaning Original) license was not the kind of relief they had asked for and what the defendants proposed would further *prevent the operations of the business possibly for a year* since a different treatment

would be required from the petitioners not required from any other Medical Laboratory, and would illegally subject the petitioners to double standard requirement for participation in the Federally-Assisted Programs (Requirement for an Initial License for a New Laboratory, for Medicare and Medicaid Participation) (1-2h, 3-7h, 13-19h). This different treatment is in violation of the petitioners' Civil Rights and further violates the Constitutional provisions more particularly the 1964 Civil Rights Act and 42 U.S.C.A. 2000d as stated in: *Green St. Ass'n v. Daley*, 373 F.2d 113 (7th Cir. 1967).

> "Provision of Civil Rights Act of 1964 that no person shall on ground of race, color, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance does not permit termination of federal participation in a given program by means of an individual suit or injunction against federal officials. Civil Rights Act of 1964, Section 601, 42 U.S.C.A. Section 2000d.

POINT IV

THE TRIAL JUDGE IGNORED THE COMPETENT UNDISPUTED EVIDENCE PRESENTED OF THIRTEEN COUNTS OF UNCONSTITUTIONAL DEPRIVATIONS OF THE PETITIONERS' CONSTITUTIONAL RIGHTS

The Trial Judge ignored the competent undisputed evidence presented of Thirteen Counts of Unconstitutional Deprivations of the petitioners' rights (53-57, 42-47) which is a direct violation of the following Statutory and Constitutional Provisions:

Title 28, United States Code Section 1343.

Title 42, United States Code Section 1981, 1983, 1985, 1986, 2000d.

The Civil Rights Act of 1964, and Civil Rights Act of 1871.

Fourteenth Amendment of the United States Constitution.

Fifth Amendment of the United States Constitution, *inter alia*:

"nor shall private property be taken for public use without just compensation"

Constitution of the State of Illinois Sections 1, 2 and 12.

Illinois Clinical Laboratory Act, Rules and Regulations:

Article VIII Section 8-102, 8-103, 8-107.
Rule 1.23 - General.
Rule 7.26.

This Court has set the standards in regards to enjoining illegal conduct: In *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 584 (1971), "An injunction can issue only after plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant if not enjoined, will engage in such conduct."

Defendants' illegal seizure of Petitioners' monies entrusted to them for services rendered by the petitioners under contract whereby defendants agreed to pay and petitioners agreed to render services is a criminal violation of the laws (42-47h, 53-57h) and further the defendants are in breach of contract and the petitioners ask that this court grant an injunction restraining the defendants from committing a breach of the contract (1-2h, 21-22h). As in

Standard Oil Company of Texas, v. Lopeno Gas Company, 240 F.2d 504 (5th. Cir. 1957), *inter alia*.

> "Under contract whereby seller agreed to sell and buyer agreed to purchase . . . Where issues related solely to validity of construction of a written contract and there was no genuine issue of fact trial court did not err in *granting permanent injunction* to *restrain defendant from committing a breach of the contract* notwithstanding the plaintiff had only applied for preliminary injunction."

These Criminal unlawful activities including illegal seizure of monies entrusted to the custody of the Defendants and other unlawful conduct as shown in which aforesaid defendants (42-47h) have successfully succeeded because of their conspiratorial scheme which restrained and prevented the petitioners from furnishing the kind of good quality services rendered the Community, services tailored to the needs of Blacks and other Minorities although not entirely but mostly. The Community relied on this service because the laboratory is equipped with the latest and most modern scientific instruments ever known or used before in any medical institution. Among other instruments is the SMA 12/60 with an estimated cost to the petitioner of $77,000.00. The petitioners contended that the reasons for the Defendants unlawful conspirational acts were because of the race and color of the Community which they serve and because of the Petitioners' race and color also. (53-57h)

The Defendants and each of them willfully and wrongfully in a conspiratorial scheme Deprived the Petitioners of their Constitutional Rights, see 42-47h and 53-57h. This Court has stated the following in regards to

conspiracy: In *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 274 (1917):

> "The element of illegality may be shown by the declaration themselves. The rule of evidence is commonly applied in criminal cases, but is of general operation; indeed, it originated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act of declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them."

Since defendants acted as shown in this court above, their act were in furtherance of the conspiracy which criminally and fraudulently deprived Petitioners of their property without Due Process and Equal Protection of the Laws violating the 5th and 14th Amendment and 28 U.S.C.A. Section 1343, 42 U.S.C.A. Sections 1983, 1985, 1986, 2000d.

The Court in *Henry v. Greenville Airport Commission*, 284 F.2d 631 (4th. Cir. 1960):

> "District Court has no discretion to deny relief by preliminary injunction to person who clearly establishes by undisputed evidence that he is being *denied a constitutional right.*"

The defendants are charged with depriving the petitioners of thirteen Unconstitutional violations of Rights (53-57h), which have been clearly established by undisputed evidence.

The following Court opinion further proves that the petitioners are entitled to a preliminary injunction: *In*

Frederick T. Schnell v. City of Chicago, 407 F.2d 1084 (7th Cir. 1969):

> "Under Civil Rights statute, injunctive relief is a proper remedy if alleged unconstitutional deprivation of rights is established 42 U.S.C.A. Section 1983."

Statutory and Constitutional Provisions provides the necessity for administering a formal hearing prior to any actions that deprive the petitioners of their guaranteed Constitutional Rights.

The defendants conducted investigations without knowledge to the petitioners, also made charges and demanded prosecutions against the petitioners without granting hearings or giving notice of charges against the petitioners, the Attorney General of the State of Illinois Acted immediately without first giving a fair and impartial hearing, and the State Attorney of Cook County also brought the petitioners before a grand jury for criminal prosecution, all these actions without a hearing, the above actions irreparably injured the good reputation of the business causing great and lasting irreparable injury and harm some not re-compensable with money damages.

The following court gives the rights to the petitioners for an injunction, a similar situation, failure to grant hearings: In *Mothers' And Children's Rights Organizations, et al., v. William R. Sterrett, et al.*, 467 F.2d 797, 801 (7th. Cir. 1972).

> "Permanent injunctive relief against Indiana's Administrator of Public Welfare and Member of the Welfare Board restraining them from terminating Benefits unless the recipients are offered a prior hearing . . . the civil right asserted is the protection of the Due Process Clause of the Fourteenth Amendment which was about to be denied by

defendants' *termination of benefits without hearing."*

The Trial Court and the U.S. Court of Appeals ignored that the defendants' failure to deny charges with competent evidence that they have committed multitude violations of the laws, but more particularly violated the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, for failure to afford a prior *hearing before terminating Medicaid Contract* (20h, 24h), *Medicare Contract* (1-2h, 21-22h), *and Revoking the renewed license* (27-28h) *which terminated all business* operations and the aforesaid contracts. The aforesaid Medicare and Medicaid contracts cannot be resumed by issuing an Initial (Original) license, since an Initial license would mean a double standard requirement for participation and would be in further violations of the laws, but more particularly of the Civil Rights Act of 1964 and 42 USC Section 2000d.

The aforesaid Medicare and Medicaid contracts can only be resumed by the issuance of a renewed license (renewal of the old license) which would not change the "*Status quo*" (12h, 15-19h).

All the Petitioners ask is that this Court grant them their right temporarily to operate their own business pending the Court's proceedings on the merits. Petitioners have not violated the laws and therefore consider it to be a reasonable request.

The defendants have in fact violated the Laws with multitude of wrongs (42-47h, 53-57h) see pages 12, 13, and 14 of this petition, so there is no reason to doubt that the petitioners will overwhelmingly prevail on the merits of this case.

The petitioners are suffering great immediate irreparable injury and harm caused by illegal acts as aforesaid

by the defendants and the U.S. Courts of Appeals for the Seventh Circuit failed to grant temporary relief to the aforesaid proven wrongs without any apparently justifying reasons, which is an abuse of discretion and is reviewable by a higher Court (this Court).

The following *cases justifies an abuse of discretion* in the petitioners being *denied a preliminary injunction* which they are well entitled to: in *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806 (7th. Cir. 1958):

> "A preliminary injunction is a provisional remedy designed to preserve the "status quo" until case can be heard on the merits, and the "*status quo*" is the last uncontested status which preceded the pending controversy."

and: in *Engine Specialties, Inc. v. Bombardier Limited*, 454 F.2d, 527 (1st. Cir. 1972):

> "An injunction is proper to prevent the threatened extinction of a business and to prevent disruption of the Company's relationship with its dealers."

and this Court sets the Standards: in *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 584 (1971):

> "An injunction can issue only after plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant if not enjoined, will engage is such conduct."

and *See* (42-47h, 53-57h) pages 12, 13, and 14 and Appendix of this petition.

CONCLUSION

For the foregoing reasons petitioners respectfully prays this Honorable Court to issue a Writ of Certiorari to review judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

JAMES A. WRIGHT
Hyde Park Medical Laboratory Inc.
Post Office Box 5268
Chicago, Illinois 60680
Phone 312-943-7448
Acting Pro se Petitioners

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, JAMES A. WRIGHT, Petitioner, being duly sworn on oath depose and state that I am the President, Director and sole Shareholder of Hyde Park Medical Laboratory, Inc., that I have read the contents of the foregoing petition for a Writ of Certiorari to the Supreme Court of the United States and all Appendix and the Statements therein are true in substance and fact.

/s/ _____

JAMES A. WRIGHT
Hyde Park Medical Laboratory Inc.
Post Office Box 5268
Chicago, Illinois 60680
Phone 312-943-7448

Acting Pro se Petitioners

SUBSCRIBED AND SWORN TO
Before me this 28th. day
of September, 1973.

/s/ Theodore M. Nicholas
Notary Public

S E A L

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 10, 1973.

Before

Hon. *LUTHER M. SWYGERT, Chief Judge*
Hon. *ROGER J. KILEY, Circuit Judge*
Hon. *ROBERT A. SPRECHER, Circuit Judge*

HYDE PARK MEDICAL LABORATORY, INC., and JAMES A. WRIGHT,
Plaintiffs-Appellants,
vs.
ILLINOIS DEPARTMENT OF PUBLIC AID, et al.,
Defendants-Appellees.

No. 73-1242

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 72 C 2385
Richard B. Austin, *Judge.*

ORDER

This is an appeal from an order denying plaintiffs' motion for a preliminary injunction. The defendants-appellees have moved for affirmance without oral argument, pursuant to Circuit Rule 22. We have examined the briefs and the record on appeal and have concluded that the questions presented by the appellants' brief are insubstantial.

Plaintiff, Hyde Park Medical Laboratory, Inc., a previously unincorporated clinical laboratory licensed pursuant to the Illinois Clinical Laboratory Act, Ill. Rev. Stat. ch. 111-1/2 §621-631, was incorporated on February 6, 1969. The licensing agency, the Illinois Department of Public Health, contends that it did not receive formal notice of the intent to incorporate or of the actual

incorporation, although the plaintiffs have submitted a copy of a letter dated February 1, 1969, informing the Department that it was in the process of incorporating, that the incorporation was for tax purposes only, and that there would be no change in technical supervision, ownership or location.

The laboratory's license was renewed for the years 1970 and 1971. On August 20, 1971, the plaintiff Wright was notified by the Department that because of the change in ownership he would have to complete a new license application. He was also requested to return his old license to be voided. The plaintiff refused to complete the application form which would have classified the laboratory as a "new" laboratory. Plaintiffs vigorously resist this designation because it would subject the laboratory to numerous rules and regulations and a new statute which are not applicable to laboratories licensed before passage of the new act whose licenses have been continually renewed.* The license application was finally completed and received by the Department of Public Health on September 5, 1972. After the standard investigation by the Department the new license was mailed to the plaintiff Wright but he has refused to accept it.

The complaint filed by Hyde Park Medical Laboratory, Inc., and James A Wright, its sole shareholder, president, and director alleged that the plaintiffs' civil rights had been violated as a result of the arbitrary and discriminatory failure to renew the plaintiff's license and to restore participation in the Department's Medical

* The appellants' brief, prepared by plaintiff James A. Wright, acting pro se, does not contain a specific citation of the new rules, regulation, and statute to which the plaintiff laboratory would be subject under the "new" classification.

Assistance Program. Numerous other civil rights violations were also alleged, including: failure to provide a hearing prior to the revocation of the license and suspension of participation in the Medical Assistance Program; failure to provide a hearing prior to submitting complaints about the plaintiff to the Attorney General, the State's Attorney of Cook County, and other government agencies, discrimination on the basis of race; failure to pay numerous bills for services performed, defamation, destruction of plaintiff's business and personal reputation; and a conspiracy to defeat the plaintiff's efforts to obtain a license.

It is not necessary to decide the numerous factual and legal issues raised by the plaintiffs' brief in this appeal, but merely to determine whether the district judge abused his discretion in denying a preliminary injunction.

From the transcript of the hearing on the motion for a preliminary injunction, it appears that the injunction was denied because the plaintiff Wright refused to sign a proposed stipulation for the entry of an order, to which both his counsel and the Attorney General had agreed. This order would have permitted the laboratory to operate under the rules and regulations for clinical laboratories and blood banks that were in effect prior to November 15, 1970, and would have required it to comply with rules and regulations regardless of their date of promulgation where such requirements would be applicable to all laboratories that were in operation prior to November 15, 1970. It also ordered the defendants to issue a new license and ordered the plaintiff to complete the necessary forms and pay the required fee for the issuance of the license. This proposed stipulation would have provided a reasonable accommodation of the conflicting interests while the factual and legal issues were

being litigated in the district court. We find no abuse of discretion in the denial of a preliminary injunction on the basis of the plaintiff Wright's unreasonable refusal to consent to the proposed stipulation. Accordingly,

IT IS ORDERED that the motion to affirm without oral argument be and the same is hereby granted and the judgment of the district court is AFFIRMED.

APPENDIX B

[Caption Omitted in Printing]

[August 24, 1973]

This matter is before the Court pursuant to the motion of the Plaintiffs-Appellants filed with Court on August 22, 1973 entitled: "MOTION DIRECTED TO A THREE JUDGE PANEL: HON. LUTHER M. SWYGERT, CHIEF JUDGE – HON. ROGER J. KILEY, CIRCUIT JUDGE – HON. ROBERT A. SPRECHER, CIRCUIT JUDGE – TO REOPEN THE ORIGINAL APPEAL ON THE PRELIMINARY INJUNCTION, BECAUSE THIS COURT REFUSED TO DOCKET (FILE) ON AUGUST 20, 1973 TWENTY FIVE COPIES OF AN AMENDED BRIEF FOR REHEARING AND REHEARING IN BANC."

Upon due consideration of this motion and being fully advised in the premises,

IT IS HEREBY ORDERED that the motion to reopen is denied, that the Clerk of this Court shall file the amended petition for rehearing en banc and distribute it in compliance with F.R.A.P. 35, and further that the petition for rehearing is denied.

APPENDIX C

[Caption Omitted in Printing]

[August 29, 1973.]

Before

Hon. *ROGER J. KILEY, Circuit Judge*

This matter is before the Court pursuant to the motion filed by the Plaintiffs-Appellants on August 28, 1973 entitled: "MOTION FOR ISSUANCE OF STAY OF MANDATE PENDING REHEARING EN BANC AND IF REHEARING EN BANC IS DENIED THAT THE STAY OF MANDATE CONTINUE PENDING APPLICATION TO THE U.S. SUPREME COURT FOR A WRIT OF CERTIORARI." Upon due consideration,

IT IS HEREBY ORDERED that the mandate in this case shall be stayed until a determination by this Court on the petition for rehearing en banc and thereafter shall issue forthwith if the rehearing is denied.

APPENDIX D

[Caption Omitted in Printing]

[September 12, 1973.]

On consideration of the amended petition for rehearing and suggestion that it be heard *en banc* filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge voted to grant the suggestion, and all of the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the amended petition for a rehearing in the above-entitled cause be and the same is hereby denied.

APPENDIX E

[Caption Omitted in Printing]

[September 12, 1973.]

Before

Hon. *ROGER J. KILEY, Circuit Judge*

This matter comes before the Court on the motion of plaintiffs-appellants for an order staying the issuance of the mandate of this Court pending a petition for writ of certiorari in the Supreme Court of the United States. On consideration whereof,

IT IS ORDERED that said motion of plaintiffs-appellants be denied without prejudice to the right to renew said motion after the petition for rehearing en banc is ruled on by the Court.

APPENDIX F

[September 18, 1973.]

Before

Hon. *ROGER J. KILEY, Circuit Judge*

Hon. *ROBERT A. SPRECHER, Circuit Judge*

This matter comes before the Court on the motion of plaintiffs-appellants for a stay of the mandate of this Court pending a petition for Writ of Certiorari in the Supreme Court of the United States. On consideration whereof;

IT IS ORDERED by the Court that said motion for stay of mandate be denied.

APPENDIX G

[September 21, 1973.]

This matter comes before the Court on the motion of Plaintiffs-Appellants to "review the appeal in view of additional and new evidence establishing overwhelming proof that the trial Judge abused his discretion by failing to grant relief to proven wrongs." On consideration whereof;

IT IS ORDERED by the Court that said motion of Plaintiffs-Appellants be DENIED.

APPENDIX H

6-29-67

State of Illinois
Department of Public Aid

INFORMATION FOR INDEPENDENT LABORATORIES

The Department of Public Aid has revised its policy and procedures in reference to payment for services provided to public assistance recipients by independent laboratories. The new policy and procedures are effective for services provided on or after July 1, 1967.

Policy

The Department will pay for services provided by an independent laboratory only if the laboratory is certified under the Medicare program to perform the type of service provided. As in the past, payment will be limited to services recommended by a physician. Payment will be at the laboratory's regular charges, if reasonable. [Emphasis added]

Billing Procedures

For recipients 65 years of age and over who are enrolled for Part B Benefits (SMIB) under Medicare, the laboratory will continue to submit bills to the Medicare Intermediary on the Social Security Administration Form 1490, Request for Payment, with a copy to the Illinois Department of Public Aid, Medical Unit, 618 East Washington Street, Springfield, Illinois, 62706. The recipient's Public Aid Case Identification Number is to be entered on the Form SSA-1490 to the right of the statement "Part I - Claims Information - To Be Completed by the Patient on the copies submitted both to the

intermediary and the Department." The copy of the form sent to the Department is to be clearly labelled as "copy" or "duplicate" and must be coded, for each procedure, according to the American Medical Association's Current Procedural Terminology. (See final paragraph of this release for availability of procedure codes.)

For recipients under 65 years of age and those 65 years or over, who are not eligible for Medicare or are not enrolled for Part B Benefits (SMIB), the laboratory is to bill on the Department's new Form MS-315, Statement of Services Rendered - Independent Laboratory, a copy of which is attached. Each procedure is to be coded according to the American Medical Association's Current Procedural Terminology. Separate charges are to be shown for each procedure the laboratory is billing for. The original of the Form MS-315 is to be submitted to the Illinois Department of Public Aid, Medical Payment Unit, 618 East Washington Street, Springfield, Illinois, 62706, by the 5th day of the month following the month of service.

* * * * *

/s/ Harold O. Swank
HAROLD O. SWANK
Director

ILLINOIS CLINICAL LABORATORY ACT
as amended

ILLINOIS BLOOD BANK ACT
as amended

AND
RULES AND REGULATIONS
FOR
CLINICAL LABORATORIES
AND BLOOD BANKS
as revised

THE NEW ILLINOIS
We accommodate
Printed November 1970

RULES AND REGULATION
RULE 1.00 - GENERAL

* * * * *

1.23 - An applicant for an original (means initial) license shall be accompanied by a license fee of $100, and all applications for renewal of license shall be accompanied by a renewal fee of $50. If during the calendar year in which the license or renewal thereto has been issued there is a change of *director*, owner, *location*, or name of the laboratory or blood bank, the Department shall be notified prior to such change. If the contemplated change is in compliance with this Act and regulations pertaining thereto, the fee for such new license shall be $50. [Emphasis added]

1.24 - If the license is to be issued to two or more persons who are co-owners or co-directors, or to an owner and a director, or any combination thereof, all such persons shall be identified upon the application for license or renewal of license and all such persons shall sign such applications under oath.

* * * * *

RULES AND REGULATION
7.20 Proficiency Survey Program.

* * * * *

7.26 - Standards of acceptable proficiency will be established for each category of specimens submitted by the Department for this purpose. A laboratory or blood bank will normally be required to display proficiency in *each* of the fields of science encompassed by the program or services which it offers.

* * * * *

Laboratory Note.

Because of limited space, only one test as an exhibit is presented at this time

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5h

BUREAU OF LABORATORY EVALUATION
DIVISION OF LABORATORIES
ILLINOIS DEPARTMENT OF PUBLIC HEALTH
1800 West Fillmore Street
Chicago
60612

RULES FOR THE STATE-OPERATED PROFICIENCY TESTING PROGRAM

Revised - January, 1969

The State-Operated Proficiency Testing Program

SYPHILIS SEROLOGY

1. If it is applicable, the laboratory must first possess a valid Illinois Clinical Laboratory License or the hospital in which the laboratory is housed must be licensed under the Illinois Hospital Licensing Act before its application for approval can be acted upon. Registration with the Bureau of Laboratory Evaluation must be completed before further steps are taken in the Approval process.
2. Each new laboratory will receive at least 20-25 specimens until approval is granted. An average grade of 90% or higher for both qualitative and quantitative testing must be obtained by the laboratory during the period before approval is granted. For a new laboratory, an on-site inspection including performance evaluation is necessary prior to approval.
3. Once approval is granted, the laboratory will receive 10 specimens per year. If, an average grade of 90% or higher for both qualitative and quantitative testing is not maintained, additional specimens will be sent. Continual performance below 90% or higher for both qualitative and quantitative testing will lead to loss of approval. Once approval is lost, the laboratory will be treated as a new laboratory. During the period when approval is again being earned, the laboratory may refer its work to another laboratory acceptable to the Department.
4. A laboratory that does not respond at all to a set of check specimens will be notified. If there is no response, another set of specimens will be sent. No response to this 2nd set of specimens and 2nd notification will indicate the laboratory is no longer interested in receiving specimens for syphilis serology approval and it will be removed from the list.

5. A laboratory submitting results beyond the due date will not be given credit for that set of specimens. If practicable, additional specimens might be sent at a future date. Continual tardiness will lead to loss of approval.
6. If a laboratory moves, and keeps its personnel intact approval will continue. If a substantial change in personnel results by the move, the laboratory at the new location must earn approval as a new laboratory. The Bureau of Laboratory Evaluation must be informed immediately, in writing, of all *changes in location and personnel.* [Emphasis added]
7. At present, the only test acceptable for prenatal and premarital testing for syphilis serology in Illinois is the VDRL test.
8. We can not engage in comparative stability testing of samples with any participating laboratory for obvious reasons.
9. We reserve the right to change the requirements for approval at any time as changing conditions dictate. All laboratories involved will be appropriately informed.

* * * * *

Section 8-102. The Department may, upon its own motion, and shall upon the verified complaint in writing of any person setting forth facts which if proven would constitute grounds for the denial of an application for a license, or refusal to renew a license, or revocation of a license, investigate the applicant or licensee. Before denying an application or refusing to renew a license, or revoking a license, the Department shall notify the applicant in writing of a hearing to be held thereon. The notice shall specify the date, time and place of the hearing which shall be held not less than 10 days after the notice is mailed or delivered. The notice shall designate the charges or reasons for its contemplated action of denial, refusal to renew, or revocation. The notice may be served by delivery of the same personally to the applicant or licensee or by mailing the same by registered mail to the address specified in the application or, in the case of a licensee, to the address of the laboratory designated in the license.

Section 8-103. The hearing shall be conducted by the Director of Public Health, or a duly qualified employee of the Department designated in writing by the Director as a Hearing Officer to conduct the hearing. The Director or Hearing Officer may compel by subpoena or subpoena duces tecum the attendance and testimony of witnesses and the production of books and papers, and administer oaths to witnesses. The hearing shall be conducted at such place as designated by the Department.

The Hearing Officer shall permit the applicant or licensee to appear in person and to be represented by counsel at the hearing at which time the applicant or licensee shall be afforded an opportunity to present all relevant matter in support of his application for license or renewal of license or in resisting the revocation thereof. In the event of the inability of either the applicant,

licensee, or the Department to procure the attendance of witnesses to give testimony or produce books and papers, either the applicant, licensee, or the Department may take the deposition of witnesses in accordance with the provisions of the laws of this State. All testimony taken at a hearing shall be reduced to writing, and all such testimony and other evidence introduced at the hearing shall be a part of the record of the hearing.

The Director or Hearing Officer shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but shall conduct hearings in such manner as seems best calculated to result in substantial justice.

All subpoenas issued by the Director or Hearing Officer may be served as provided for in civil actions. The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the Circuit Court and shall be paid by the party to such proceedings at whose request the subpoena is issued. If such subpoena is issued at the request of the Department, the witness fee shall be paid as an administrative expense.

In cases of refusal of a witness to attend or testify, or to produce books or papers, concerning any matter upon which he might be lawfully examined, the Circuit Court of the county wherein the hearing is held, or a judge thereof, upon application of any party to the proceeding, may compel obedience by proceeding as for contempt as in cases of a like refusal to obey a similar order of said Court.

* * * * *

Section 8-107. Upon the revocation of his license, a licensee shall be required to surrender his license to the Department, and upon his failure or refusal to do so, the Department shall have the right to seize the same. [Emphasis added]

10h

State of Illinois
DEPARTMENT OF PUBLIC HEALTH
Springfield, Illinois 62706

Franklin D. Yoder, M.D., M.P.H.
Director

DIVISION OF HEALTH CARE FACILITIES AND CHRONIC ILLNESS

1-12-71

Director
Hyde Park Medical Lab
5240 S. Harper
Chicago, Illinois 60615

Dear

Re: Laboratory I.D. #912

This will confirm our phone conversation of 1-12-71 that I will conduct a site survey of your laboratory on 1-20-71.

It is requested that you have copies of all Proficiency Testing results, State-Operated and State-Approved available at the time of my visit.

If the above date and time must be changed for any reason I will contact you or you may contact me at the phone number below.

Thank you.

/s/ Joseph E. Mabegger, M.D.
Illinois Department of Public Health Consultant
421 North Lake Street, Aurora, 60506
(Address)

312-896-4681
(Telephone)

COLLEGE OF AMERICAN PATHOLOGISTS

STANDARDS COMMITTEE

programs of excellence

THIS CERTIFICATE IS AWARDED TO

HYDE PARK MED LABORATORY

AS RECOGNITION OF THIS LABORATORY'S PARTICIPATION IN THE COLLEGE OF AMERICAN PATHOLOGISTS' "PROGRAMS OF EXCELLENCE" BY SUBSCRIBING TO THE [illegible] SURVEY PROGRAM.

[signature]

[illegible]

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC HEALTH

Clinical Laboratory License

This Certifies That HYDE PARK MEDICAL LAB
located at 5240 S. Harper, Chicago, Illinois 60615
has fulfilled the requirements of state law, and is a licensed clinical laboratory authorized to operate as such for the year 19 71. Any change in technical supervision, ownership or location renders this license invalid.

In Witness Whereof the director of the Illinois Department of Public Health has subscribed and caused the seal of the Department of Public Health to be attached hereto in Springfield the first day of January, 19 71.

Lawrence D. Yale M.D.

EXPIRES DEC. 31, 1971

LAB I.D. #912

No. 1921

12h

HYDE PARK MEDICAL LABORATORY
5240 South Harper Avenue • Chicago, Illinois 60615
HY 3-2000

February 1, 1969

Department of Public Health
Division of Health Care Facilities
and Chronic Illiness
518 State Office Building
Springfield, Illinois 62706

ATTN: R. F. Sondag, M.D., M.P.H. Chief
Bureau of Personal & Community Health

Re: Laboratory I.D. #912

Dear Dr. Sondag:

This letter will serve to inform the Department of Public Health according to and in compliance with the Illinois Clinical Laboratory Act that the Hyde Park Medical Laboratory is in the process of becoming Incorporated.

The Corporation will be formed on or about the 4th of February 1969 for tax purposes only, there will be no change in Technical supervision, ownership or location. I will be the only Director, President and 100 per cent sharehonder.

All equipment necessary for the operation of the laboratory will remain in my name and leased to the Corporation.

Very truly yours,

James A. Wright, Director.

No. 115

LABORATORY

BY AUTHORITY OF THE

CITY of CHICAGO

$.45.00

PERMISSION IS HEREBY GIVEN

Name Hyde Park Medical Laboratories

Address 5240 S. Harper Ave. (Zip 60615), CHICAGO, ILL.

to establish, maintain or operate a Laboratory of Class 4

at address stated above, in said City, until the FIRST DAY OF MAY NEXT, subject to the ordinances of said City in such case made and provided, and to revocation by the Mayor at any time at his discretion.

No. of Employees 4

WITNESS the hand of the Mayor of said City, and the Corporate Seal, thereof, this 17th day of July 1969

1969-70

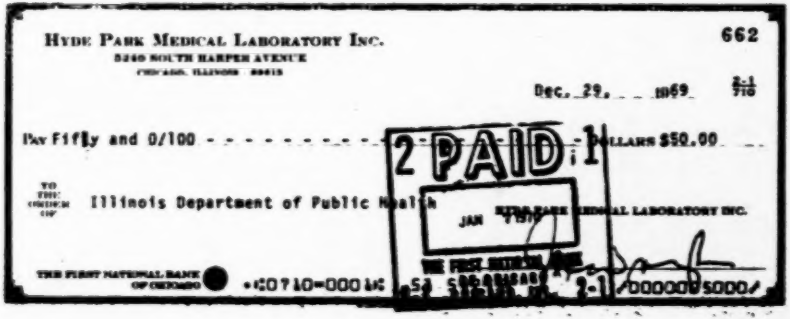
RICHARD J. DALEY
MAYOR

Note:—This License Expires
April 30, 1970

ATTEST JOHN C. MARCIN
CITY CLERK

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE LICENSED PREMISES

14h

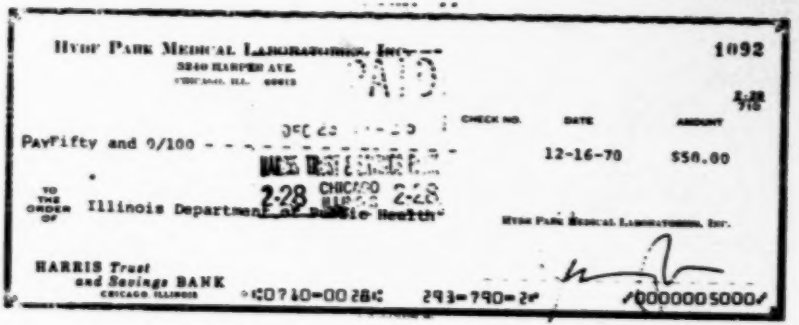


HYDE PARK MEDICAL LABORATORY INC.
5240 SOUTH HARPER AVENUE
CHICAGO, ILLINOIS 60615

662

Dec. 29, 1969

Pay Fifty and 0/100 - - -



HYDE PARK MEDICAL LABORATORIES, INC.
5240 HARPER AVE.
CHICAGO, ILL. 60615

PAID

1092

2-28
710

CHECK NO. | DATE | AMOUNT

12-16-70 | $50.00

PayFifty and 0/100 - - -

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC HEALTH
SPRINGFIELD, ILLINOIS 62706

Franklin D. Yoder, M.D., M.P.H.
Director

DIVISION OF HEALTH CARE
FACILITIES AND CHRONIC ILLNESS

February 12, 1971

James A. Wright
Director
Hyde Park Medical Laboratories, *Inc.* [Emphasis added]
5240 South Harper Avenue
Chicago, Illinois 60615

Dear Mr. Wright:

Re: Laboratory I.D. #912
Provider No. 14-8149

This will acknowledge receipt of your letter of February 9, 1971 replying to our letter listing deficiencies and recommendations found at the time your site survey was conducted. The survey was to determine whether you meet the Conditions of Coverage of Independent Laboratories under the Social Security Act, Health Insurance for the Aged Program. This survey was also to verify your continued compliance with the Illinois Clinical Laboratory Act *which is a prerequisite for certification to participate in the Medicare Program.*

At the time of the survey the consultant completed with your assistance SSA-1557B, Evaluation of Quality Control Programs in Laboratories covering Clinical Chemistry, Hematology, Immunohematology, Microbiology, Serology and Urinalysis. Based on the information you provided the consultant, you received a listing of recommendations to assist you in updating the quality of your laboratory services. You were also notified April

18, 1968, that beginning July 1, 1968, *all* Illinois licensed clinical laboratories had to participate in proficiency testing.

It is the Department's intention after all of the surveys have been completed to review the deficiencies and recommendations to determine the need for workshops or seminars. If the need is verified, a schedule of these proposed workshops will be developed and mailed to all laboratories. You will have the opportunity to attend those which would help you resolve any problems you may have, as well as to assist you in providing the best possible laboratory service.

Thank you for your interest and prompt reply.

Very truly yours,
/s/ R. F. Sondag
R. F. Sondag, M.D., M.P.H., Chief
Bureau of Personal and Community Health

cc: Social Security Administration

19h

March 16, 1971

Our Reference: HI-13:M
Provider Number 14-8149

Mr. James Wright
Director
Hyde Park Medical Laboratory
5240 South Harper
Chicago, Illinois 60615

Dear Mr. Wright:

We are pleased to inform you that your laboratory continues to meet the requirements for coverage of services under the Medicare program (Title XVIII of the Social Security Act). Your laboratory is approved for tests and procedures as indicated on the attached list.

The State agency has informed us that no significant deficiencies were noted during the resurvey of your laboratory. You should report to the State agency any changes in staffing, services, or organization which might affect your certification status.

We appreciate your cooperation and look forward to your continuing participation in the Medicare program.

Sincerely yours,

Fred B. Wolf
Regional Representative
Health Insurance

Enclosure

cc: Illinois State agency, Intermediary, C. Bennett (draft)

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC AID

HAROLD O. SWANK
Director

618 EAST WASHINGTON STREET
SPRINGFIELD, ILLINOIS 62706

July 14, 1971

Mr. James A. Wright, Director
Hyde Park Medical Laboratory
5240 South Harper Avenue
Chicago, Illinois

Dear Mr. Wright:

I have received a preliminary report of the investigation of Hyde Park Medical Laboratory's billing practices for services provided to public aid recipients. The investigation has revealed substantial irregularities and necessitates the Department continuing its review.

This letter will serve as notification that based on preliminary findings of the investigation, Hyde Park Medical Laboratory has been suspended from participation in the Department's Medical Assistance Program. Unpaid statements received by the Department will be held pending final disposition of this matter.

Sincerely,

/s/ Harold O. Swank
Harold O. Swank
Director

HOS:dn

BLUE CROSS | *PLAN FOR HOSPITAL CARE OF HOSPITAL SERVICE CORPORATION*

BLUE SHIELD | *MEDICAL-SURGICAL PLAN OF ILLINOIS MEDICAL SERVICE*

MEDICARE *GOVERNMENT CONTRACTS DIVISION 222 NORTH DEARBORN STREET, CHICAGO, ILLINOIS 60601 • 661-4252*

HydePark Medical Laboratory
5240 South Harper
Chicago, Illinois

January 14, 1971

Dear Laboratory Director:

The Social Security Administration has announced two new Medicare regulations regarding laboratory tests and more specific regulations on the coverage of portable X-ray services.

Laboratory Tests

1. Laboratory tests ordered by podiatrists are now covered if they are related to the legal scope of podiatric practice. The tests must be reasonable and necessary for the diagnosis or treatment of a patient's condition, and they must not be in connection with excluded services such as flat feet, routine foot care, etc.

2. The entire charge for an initial battery of multi-channel automated laboratory tests is covered if one or more of the tests is ordered by a physician for a specific diagnosis or symptom. If the battery is repeated, however, only the individual tests required are covered. When no test in an automated battery of tests can be related to a specific complaint or symptom, no payment will be allowed.

* * * * *

If you need more information about these new regulations, please contact me at:

Blue Shield Plan of
Illinois Medical Service
Professional Relations Department
222 North Dearborn Street
Chicago, Illinois 60601
Phone: (312) 661-4775

Sincerely,

/s/ Dean Stanley
Dean P. Stanley
Coordinator
Supplier Services
Professional Relations

DPS/at

July 26, 1971

Mr. Robert G. Wessel
Chief, Medical Administration
Department of Public Aid
State of Illinois
618 East Washington
Springfield, Illinois 62706

Dear Mr. Wessel:

In response to Mr. Harold Swank, Director of the Department of Public Aid letter dated July 14, 1971, the unjust action of the Department of Public Aid against Hyde Park Medical Laboratories. I am making my *fourth request for a hearing* in writing, since I have placed three phone calls requesting a hearing and I have been unsuccessful.

Due to established Rules and Regulations of the Department of Health Education and Welfare I am entitled to a hearing.

Hoping to hear from you at your earliest convenience.

Very truly yours,

James A. Wright, Director

24h

STATE OF ILLINOIS

DEPARTMENT OF PUBLIC AID

HAROLD O. SWANK
Director

618 EAST WASHINGTON STREET
SPRINGFIELD, ILLINOIS 62706

July 30, 1971

Mr. James A. Wright, Director
Hyde Park Medical Laboratory
5240 South Harper Avenue
Chicago, Illinois

Dear Mr. Wright:

This is a follow-up to my previous letter dated July 14, 1971, notifying you of your suspension from participation in the Department's Medical Assistance Program.

At that time you were notified also that unpaid statements would be held pending a final disposition of this matter. For your information the results of the Department's investigation have been referred to the Attorney General of the State of Illinois. The Attorney General has notified this office that billings which are being held should not be paid and that the Hyde Park Medical Laboratory would have to file a claim in the Court of Claims of the State of Illinois to receive such payments, if any, as you may be entitled to.

The Department is abiding by the Attorney General's recommendations in this matter and this is to inform you that payments will not be made except under the circumstances indicated above.

Sincerely,

/s/ Harold O. Swank
Harold O. Swank
Director

HOS:ban

McCOY, MING & BLACK
ATTORNEYS AND COUNSELORS
Joel Hunter Building
123 West Madison Street
Chicago, Illinois 60602

LORING B. MOORE (DECEASED)

FLEETWOOD M. McCOY
WILLIAM R. MING, JR.
WALTER K. BLACK
CHAUNCEY ESKRIDGE
ELLIS E. REID

ALDUS S. MITCHELL
SOPHIA H. HALL
EDWARD A. WILLIAMS

FRanklin 2-1106
Area Code 312

MOORE, MING & LEIGHTON
(1953-1959)

McCOY, MING & LEIGHTON
(1959-1964)

August 4, 1971

Mr. Robert G. Wessel
Chief, Medical Administration
Department of Public Aid
State of Illinois
618 East Washington
Springfield, Illinois 62706

Dear Mr. Wessel:

Re: Hyde Park Medical Laboratories

I have made 2 attempts to contact you by telephone and was unsuccessful and evidently the press of other matters has prevented your returning my calls as I requested your secretary to have you do.

In my earlier telephone conversation with you concerning the matter between the Department and our client, Hyde Park Medical Laboratories, you had advised me that the matter had been turned over to the Attorney General's Office for examination and whatever action that office deemed appropriate, and that it would serve no useful purpose for us to confer about the matter.

On Friday, last, Bernard Genis, Assistant Attorney General, advised us that he was returning the matter to Springfield with the advice that inasmuch as there was

substantial claims on both sides, that it was the opinion of his office that if the matter couldn't be resolved by negotiation, that it should be brought to the attention of the Court of Claims by our client. I have no way of knowing whether or not the file has reached your office as yet. However, I am renewing my earlier request to confer with you and whoever else in your office it might be necessary in such a conference to see if this matter can't be amicably adjusted short of litigation.

From the information that we have from our client and our examination of the records of his operation that have been brought to our attention, we are of the opinion that in the interest of both the Department and our client, that a sincere effort should be made on both sides to reach a resolution of this problem. I do not believe that it is the intentions of the Department or any of the Officials thereof to put our client out of business so far as his participation in the Medical Assistance Program of the Department is concerned. However, the fact is that because of the position of the Department in refusing to make any payment on the outstanding balance owed our client and the act of suspending our client from participation in the Department's Medical Assistance Program as he was informed in a letter from Mr. Swank, dated July 14, 1971 which was mailed July 19, 1971, his business has been substantially damaged and he is daily incuring heavy financial losses. I am ready to come to Springfield to discuss this matter at your earliest convenience and your early response to this letter will be appreciated.

Very truly yours,

WALTER K. BLACK

WKG:lgp

cc: Mr. James A. Wright
Hyde Park Medical Laboratories
5240 South Harper Avenue
Chicago, Illinois 60615

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC HEALTH
535 WEST JEFFERSON STREET
SPRINGFIELD, ILLINOIS 62706

FRANKLIN D. YODER, M.D., M.P.H.
DIRECTOR

BUREAU OF
PERSONAL & COMMUNITY HEALTH
R.F. SONDAG, M.D., M.P.H., CHIEF
(Area Code 217) 525–6587

August 20, 1971

IN REPLY REFER TO: PC:HF:HL
Laboratory I.D. #912

REGISTERED MAIL
RETURN RECEIPT REQUESTED

James A. Wright
Director
Hyde Park Medical Laboratory
5240 South Harper
Chicago, Illinois 60615

Dear Mr. Wright:

It has come to the attention of the Department that the Hyde Park Medical Laboratory was incorporated on February 6, 1969. Since on all of our records the owner of the Hyde Park Medical Laboratory is listed as James A. Wright, incorporation constitutes a change of owner.

Enclosed please find two *initial* license application kits, each to be completed in full. The original is to be returned to this office along with your nonrefundable check in the amount of $50 - refer to the attached copy of Article III, Section 3-106. Also, send us license certificate No. 1921 issued January 1, 1971, which will be voided. [Emphasis added]

Upon receipt and review of this application, we will notify an Illinois Department of Public Health Laboratory Consultant to conduct a site survey of this laboratory to assure compliance with the Illinois Clinical

Laboratory Act as well as your continued eligibility to participate in the Health Insurance for the Aged Program - Medicare.

Your new license certificate will be issued when the consultant submits his site survey report forms and they are processed.

The Department will extend a time limit for the return of these forms of thirty (30) days from receipt of this letter.

Very truly yours,

/s/ Rt. Bilstein
Robert F. Bilstein, F.A.C.H.A.
Administrator
Hospital and Laboratory Section
Division of Health Facilities

Enclosures

cc: R. A. Morrissey
Social Security Administration

29h

August 24, 1971

Mr. Walter K. Black
McCoy, Ming & Black
Attorneys & Counselors
Westminister Building
110 South Dearborn Street
Suite 1500
Chicago, Illinois 60603

Re: Hyde Park Medical Laboratory

Dear Mr. Black:

This is in reply to your letter of August 4, 1971, requesting a meeting with you to discuss the resolution of the problems between your client (Hyde Park Medical Laboratory) and the Department of Public Aid.

As I indicated to you in previous conversations, we are of the opinion that since this case has been referred to the Attorney General and to the State's Attorney of Cook County, it would be inappropriate for this Department to act prior to written notification from these offices that they have no interest in this particular case.

You are right in your indication that the Department's intentions are not in putting "your client out of business". The Department is interested in and is responsible for the purchase of medical services at the most reasonable cost and to assure both the Federal government and the State of Illinois that payment is being made for appropriate services as ordered by a physician and delivered by the provider of such services. The investigation up to this date gives the Department every indication that this situation has not prevailed insofar as your client is concerned.

In view of this I would see that nothing would be gained by holding a joint meeting to discuss this case. [Emphasis added]

Very truly yours,

ROBERT G. WESSEL, Chief
Medical Administration

RGW:ban
cc: Mr. Hurwitz

McCOY, MING & BLACK
ATTORNEYS AND COUNSELORS
WESTMINSTER BUILDING
110 SOUTH DEARBORN STREET
SUITE 1500
CHICAGO, ILLINOIS 60603

Loring B. Moore (Deceased)

Fleetwood M. McCoy
William R. Ming, Jr.
Walter K. Black
Chauncey Eskridge
Ellis E. Reid
Aldus S. Mitchell
Sophia H. Hall

FRanklin 2-1108
Area Code 312

Moore, Ming & Leighton
(1953-1959)

McCoy, Ming & Leighton
(1959-1964)

August 25, 1971

Mr. Robert F. Bilstein, F.A.C.H.A.
Administrator, Hospital and Laboratory Section
Department of Public Health
State of Illinois
535 West Jefferson Street
Springfield, Illinois 62706

Dear Mr. Bilstein:

Re: PC: HF: HL
Laboratory I.D. #912

Your Registered letter dated August 20, 1971 addressed to James A. Wright, Director, Hyde Park Medical Laboratory has been delivered to me by Mr. Wright for study and reply. In addition to the close attention given your letter, I have reviewed the Clinical Laboratory Act as well to better understand what your letter is intended to achieve.

We respectfully submit that so far as the intent of the act is concerned, there has been no change so far as the actual ownership, site location, management, services and

operation of Hyde Park Medical Laboratory. Mr. Wright, being the sole shareholder and sole director of the corporation, continues to be the sole actual owner and the only Director of its operation.

Moreover, since incorporation, the laboratory has been inspected and its license renewed for 1971. It is hoped that in the light of the foregoing, and in the interest of speedily correcting the name of the licensee to Hyde Park Medical Laboratory, Inc., and having the lincense issued to the laboratory and James A. Wright, that the Department will give the liberal construction to the Clinical Laboratory Act called for by it and *not treat this license as if it were a new applicant.* (Emphasis supplied)

We hope that you will agree, and, in the interest of the Department and our client, accept the enclosed $50.00 and issue the license as aforesaid. **Enclosed* also is a copy of the corporation's record of action by Sole Shareholder and of communications relating to the latest site survey and an inspection under the Medicare Program. (Emphasis supplied)

Appreciating your courtesy and consideration in this matter, I am,

Very truly yours,

WALTER K. BLACK

WKB:lgp
Enc.
REGISTERED MAIL
RETURN RECEIPT REQUESTED

*Enclosed: 17h-18h, 19h, 33h-39h

33h

Certificate Number 36163

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

Whereas, *Articles of Incorporation duly signed and verified of* HYDE PARK MEDICAL LABORATORY, INC. *have been filed in the Office of the Secretary of State on the* 6th *day of* February *A.D. 19*69*, as provided by "*The Business Corporation Act*" of Illinois, in force July 13, A.D. 1933.*

Now Therefore, I, Paul Powell, *Secretary of State of the State of Illinois by virtue of the powers vested in me by law, do hereby issue this certificate of incorporation and attach thereto a copy of the Articles of Incorporation of the aforesaid corporation.*

In Testimony Whereof, *Thereto set my hand and cause to be affixed the Great Seal of the State of Illinois,*

Done at the City of Springfield this 6th *day of* February *A.D. 19*69 *and of the Independence of the United States the one hundred and* 93rd.

/s/ Paul Powell
SECRETARY OF STATE.

FORM B C A-47

BEFORE ATTEMPTING TO EXECUTE THESE BLANKS BE SURE TO READ CAREFULLY THE INSTRUCTIONS ON THE BACK THEREOF.

(THESE ARTICLES MUST BE FILED IN DUPLICATE)

STATE OF ILLINOIS)
COOK COUNTY) ss.

Date Paid
Initial License Fee $
Franchise Tax $
Filing Fee $
Clerk

TO PAUL POWELL,
Secretary of State:

The undersigned.

Name	Number	Address Street	City	State
James A. Wright	1455 N. Sandburg Terrace, Chicago, Ill. 60610			

being one or more natural persons of the age of twenty-one years or more or a corporation, and having subscribed to shares of the corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

ARTICLE ONE

The name of the corporation hereby incorporated is: HYDE PARK MEDICAL LABORATORY, INC.

ARTICLE TWO

The *address* of its initial registered office in the State of Illinois is: 5240 So. Harper Ave., Street, in the city of Chicago, Ill. 60615) County of Cook and the *name* of its initial Registered Agent at *said address* is: James A. Wright

ARTICLE THREE

The duration of the corporation is: Perpetual

ARTICLE FOUR

The purpose or purposes for which the corporation is organized are:

To carry on the business of a medical laboratory and related activities.

ARTICLE FIVE

Paragraph 1: The aggregate number of shares which the corporation is authorized to issue is 1,000 divided into one classes. The designation of each class, the number of shares of each class, and the par value, if any, of the shares of each class, or a statement that the shares of any class are without par value, are as follows:

Class	Series (if any)	Number of Shares	Par value per share or statement that shares are without par value
Common	None	1,000	$100.00

Paragraph 2: The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are:

ARTICLE SIX

The class and number of shares which the corporation proposes to issue without further report to the Secretary of State, and the consideration (expressed in dollars) to be received by the corporation therefor, are:

Class of Shares	Number of shares	Total consideration to be received therefor:
Common	100	$ 10,000.00

ARTICLE SEVEN

The corporation will not commence business until at least one thousand dollars has been received as consideration for the issuance of shares.

ARTICLE EIGHT

The number of directors to be elected at the first meeting of the shareholders is: one.

Incorporators

NOTE: There may be one or more incorporators. Each incorporator shall be either a corporation, domestic or foreign, or a natural person of the age of twenty-one years or more. If a corporation acts as incorporator, the name of the corporation and state of incorporation shall be shown and the execution must be by its President or Vice President and verified by him, and the corporate seal shall be affixed and attested by its Secretary or an Assistant Secretary.

OATH AND ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
County)

I, [illegible], A Notary Public, do hereby certify that on the [illegible] day of [illegible], 19[illegible]

JAMES A WRIGHT

personally appeared before me and being first duly sworn by me acknowledged the signing of the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

[illegible] SEAL

[illegible]
Notary Public

COOK COUNTY, ILL. NOTARY PUBLIC

FORM B.C.A. 37

ARTICLES OF INCORPORATION

STATE OF ILLINOIS
"THE BUSINESS CORPORATION ACT"
BY-LAWS
OF

ARTICLE VI

CERTIFICATES FOR SHARES AND THEIR TRANSFER

SECTION 1. CERTIFICATES FOR SHARES. Certificates representing shares of the corporation shall be in such form as may be determined by the board of directors. Such certificates shall be signed by the president or a vice-president and by the secretary or an assistant secretary and shall be sealed with the seal of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. *The name of the person* to whom the shares represented thereby are issued, with the number of shares and date of issue, shall *be entered on the books of the corporation.* All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the board of directors may prescribe.

SECTION 2. TRANSFERS OF SHARES. Transfers of shares of the corporation shall be made only on the books of the corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and on surrender for cancellation of the certificate for such

shares. *The person in whose name shares stand on the books of the corporation shall be deemed the owner thereof for all purposes as regards the corporation.*

STATE OF ILLINOIS

DEPARTMENT OF PUBLIC HEALTH

SPRINGFIELD, ILLINOIS 62706

Franklin D. Yoder, M.D., M.P.H.
Director

Bureau of
Personal & Community Health
R.F. Sondag, M.D., M.P.H., Chief

In Reply Refer To:
PC:HF:HL
Laboratory I.D. #912

September 1, 1971

Walter K. Black
McCoy, Ming & Black
Attorneys and Counselors
110 South Dearborn Street
Suite 1500
Chicago, Illinois 60603

Dear Mr. Black:

This is to acknowledge receipt of your letter of August 25, 1971, and Mr. Wright's check for $50.00. We cannot, however, issue a new license as you suggest, on this basis alone. Please instruct Mr. Wright to *complete the application form included in our letter of August 20, 1971.* (Emphasis supplied)

The Hyde Park Medical Laboratory is a participant in the Health Insurance for the Aged Program – Medicare and we need to recertify it to the Social Security Administration. This process will require that the laboratory be reinspected as we have indicated in our letter of August 20, 1971.

Also, please have Mr. Wright return license certificate No. 1921 issued January 1, 1971, to this office so that it can be voided.

Please give this matter your prompt attention. If you have any further questions, do not hestiate to write the Hospital and Laboratory Section of this Division.

Very truly yours,

Robert F. Bilstein, F.A.C.H.A.
Administrator, Hospital and
Laboratory Section
Division of Health Facilities

cc: James A. Wright
R.A. Morrissey
Social Security Administration

AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF COOK) ss

The under signed being duly sworn on oath, deposes and say:

1. That, Hyde Park Medical Laboratory Inc., is an Illinois Corporation registered under the Laws of the State of Illinois.

2. That, Hyde Park Medical Laboratory Inc., is suffering irreparable injury due to the loss of all income which is a substantial sum.

3. That, any measure of injury or harm is a lost of Hyde Park Medical Laboratory Inc., profits.

4. That, an estimate of more than $95,000.00 pre-tax dollars was estimated in account receivables and entrusted to the Defendants in 1970, which have been illegally seized in furtherance of the conspiracy without offording a hearing. The aforesaid seizure have increased and furthered the great and lasting irreparable injury.

5. That, since July 14, 1971, Hyde Park Medical Laboratory, Inc., have been suffering continuous tortious injury by the defendants arbitrary, unreasonable and illegal suspension from participating in the Medicaid program, illegal seizure of monies overdue and owing for services performed under contract, without affording a hearing. As a public agency violating fiduciary obligations and relations with Hyde Park Medical Laboratory Inc., in contravention with State and Federal Government policy and laws, and thereby interducing great and lasting irreparable harm and injury some not readily or not at all re-compensable in money damages.

6. That, August 20, 1971, Hyde Park Medical Laboratory Inc., Suffered Great and Lasting Irreparable Injury and harm by the Revocation of its License suddenly and

abruptly terminating all business operations, breaching its contracts with all physicians, creditors, and dealers, Medicare, and creating further and greater impaired relations with Medicaid. Without affording a prior hearing.

7. That, Hyde Park Medical Laboratory Inc., continue to suffer irreparable harm because of the defendants malicious interfering with a profitable business and converting it into a no-income, no-profit continuous expenses and a business continuously suffering great and lasting irreparable harm.

8. That, an Initial License proposed by the defendants will cause additional and greater irreparable injury for a double standard requirements for participation in the Federally Assisted Programs, a rating which have already been certified in 1967.

9. That, That, Hyde Park Medical Laboratory Inc., is one of the best equipped laboratory in this City with the most modern equipment and would not suffer loss of business had it not been for wrongful and malicious interference of the defendants.

Witnessed by:

/s/ James A. Wright
JAMES A. WRIGHT,
President, and Director.

/s/ Danuta P. Wright
DANUTA P. WRIGHT,
Secretary.

SUBSCRIBED and SWORN to
Before me this 28th
day of September 1973.

/s/ _____
Notary Public

_____

HYDE PARK MEDICAL LABORATORY, INC.,
an Illinois corporation
Claimant

-vs-

THE STATE OF ILLINOIS and THE
ILLINOIS DEPARTMENT OF PUBLIC AID
Respondents

COMPLAINT

NOW COMES CLAIMANT, HYDE PARK MEDICAL LABORATORY, INC., an Illinois corporation, by its attorney GENE K. EDLIN, and claiming for payment of its claims against the STATE OF ILLINOIS and the ILLINOIS DEPARTMENT OF PUBLIC AID, Respondents, represents to this Honorable Court as follows:

1. Claimant has been doing business as a medical laboratory in the City of Chicago and has provided services in conjunction therewith at all times relevant hereto. JAMES A. WRIGHT is President of HYDE PARK MEDICAL LABORATORY, INC., Which is an Illinois corporation.

(a). The claim on which this complaint is based has heretofore been presented to the ILLINOIS DEPARTMENT OF PUBLIC AID in the form of DPA 315 forms presented from time to time during the period from on or about December 31, 1969 through on or about May 31, 1971. All such forms were identified with Provider No. 14-8149 and were submitted in accordance with the submittal instructions of the ILLINOIS DEPARTMENT OF PUBLIC AID, pursuant to the usual and customary course of dealing between Claimant and said Department.

(b). The ILLINOIS DEPARTMENT OF PUBLIC AID has unjustly failed and neglected to make payment

of said claim. On July 14, 1971, the ILLINOIS DEPARTMENT OF PUBLIC AID notified the Claimant that the unpaid statements are being held pending disposition of investigation of billing practices.

2. The claim upon which this Complaint is based is owned by HYDE PARK MEDICAL LABORATORY, INC., an Illinois corporation, and became due and owing upon open account, as an account stated 30 days after the submission of each such form DPA 315, in consideration of medical laboratory services rendered by Claimant to welfare patients pursuant to signed orders from offices of the doctors treating said patients. As set forth in each separate form DPA 315, the services were duly and fully performed by Claimant.

3. There has been no assignment or transfer of the claim or part thereof or interest therein, except that Claimant has agreed to pay its attorneys in these proceedings a sum equal to one-third of any amount realized from said claim either by settlement or by judgment.

4. Claimant is justly entitled to the amount herein claimed from THE STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF PUBLIC AID after allowing all just credits.

5. Claimant believes the facts stated in the complaint to be true.

6. Neither this claim nor any other claim arising out of the same occurrence has been previously presented to any person, corporation or tribunal other than THE STATE OF ILLINOIS.

(a). The invoices comprising this account reflect an average charge per invoice of approximately $40. There are accordingly approximately 7500 such invoices, copies of which all of which have heretofore been delivered to

and are in the possession of the ILLINOIS DEPARTMENT OF PUBLIC AID, and accordingly additional copies are not hereto attached. Said accounts are exceedingly voluminous, comprising no less than four cartons of invoices which are available to be delivered for inspection as Respondents may request.

7. The STATE OF ILLINOIS, through the Director of its DEPARTMENT OF PUBLIC AID and through various sub-agencies and sub-agents, has without just cause failed, neglected and refused to pay the aforesaid sums, which continue to be past due and are owing. No statement of incorrectness of said account was given to Claimant by said Department or agents within thirty days after the filing of the requisite forms, and there is accordingly an account stated, presently owing and past due in the amount of $307,960.00.

8. Claimant is further entitled to statutory interest on said claim by reason of the undue and vexations delay in payment thereof.

WHEREFORE, Claimant, HYDE PARK MEDICAL LABORATORY, INC., an Illinois corporation, prays for judgment against Respondents and an award by this Court in the amount of THREE HUNDRED SEVEN THOUSAND NINE HUNDRED SIXTY DOLLARS, together with such additional interest as this Court may find justly owing, and the costs of this action.

HYDE PARK MEDICAL
LABORATORY, INC., by

_____
President

STATE OF ILLINOIS)
COUNTY OF COOK) SS

JAMES A. WRIGHT, being first duly sworn, on oath states that he is the President of the corporate Claimant, that he has knowledge of the facts set forth in said Complaint, which he has read and understands, and that all matters therein set forth are true, except that as to exact dollar amounts said amounts are based on the books and records kept in the course of business and that he verily believes them to be correct.

/s/ James A. Wright
JAMES A. WRIGHT

Subscribed and sworn to
before me this 16th day
of June, 1972

_____
Notary Public in and for the
County of Cook, State of Illinois

Note: This claim have been filed on or about June 16, 1972 and is now pending in the State of Illinois Court of Claims.

Thomas C. McDonough
542-2929

U.S.A.

P6J.X'ed

Jun 97th Gr. Jury
No. 209

State of Illinois, } ss
County of Cook }

The People of the State of Illinois

To Hyde Park Medical Laboratory, Inc.
5240 South Harper Avenue
Chicago, Illinois
James Wright, President GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you attend before the Grand Jury of our Circuit Court of Cook County, on the 8th day of June 19 72 at 1:30 o'clock in the noon, at the usual place of the Circuit Court House in Chicago, 26th and California Avenue, in said Cook County, to give evidence and the truth to speak concerning a certain complaint made before said Grand Jury against James Wright, et al., Possible theft from Illinois Department of Public Aid and that you also diligently and carefully search for, examine and inquire after and bring with you and produce at the time and place aforesaid Original orders, in the possession of Hyde Park Medical Laboratory, Inc., from the following physicians requesting laboratory tests to be performed by the Hyde Park Medical Laboratory, Inc., for the period from January 1, 1970 through January 31, 1971:

1. J. F. Costa 5961 N. Prairie
2. J. Borrios 404 W. Division
3. M. Cohen 407 W. Division
4. P. J. D'Iorio 2930 W. Arthur
5. N. Delenitis 237 S. 47th Street
6. L. A. Georgoulis 7409 Warren Blvd.
7. W. G. Haas 3527 W. Roosevelt
8. G. Haase 3935 W. Roosevelt
9. L. Haspel 3527 W. Roosevelt

(and such further material as is required by addendum attached hereto, and made a part hereof)

And this you will in no wise omit under penalty of the law

Witness, MATTHEW J. DANAHER, Clerk of our said Court, 6th and the Seal thereof, at Chicago in said County this 6th day of June 19 72

Clerk

LOUIS P. GARIPPO
CHIEF DEPUTY CLERK, CRIMINAL DIVISION
3600 SOUTH CALIFORNIA AVENUE CHICAGO, ILLINOIS 60608

49h

ADDENDUM ATTACHED TO AND MADE A PART OF SUBPOENA DUCES TECUM ISSUED TO HYDE PARK MEDICAL LABORATORY, INC., 5240 SOUTH HARPER AVENUE, CHICAGO, ILLINOIS, JAMES WRIGHT, PRESIDENT, DATED JUNE 6, 1972

10.	S. Lloyan	810 W. Garfield
11.	L. Keplan	3527 W. Roosevelt
12.	B. Kato	3527 W. Roosevelt
13.	G. T. Kersey	5061 Prairie
14.	F. Kideya	200 E. 47th Street
15.	C. Lajara	4354 W. Madison
16.	J. Lam	733 W. 64th Street
17.	D. P. Morris	3527 W. Roosevelt
18.	H. H. Morrison	110 E. 79th Street
19.	A. Nicolas	3508 S. King Drive
20.	S. R. Peyton	4541 S. Michigan
21.	A. Ramirez	265 N. Pulaski
22.	G. Roseria	949 N. Larrabee Street
23.	R. Rubio	4354 W. Madison
24.	M. Salassi	949 N. Larrabee
25.	S. K. Tau	1525 E. 53rd St. Rm 635
26.	E. Tapia	3955 W. Roosevelt
27.	B. B. Grichter	3955 W. Roosevelt
28.	Ramon Melia	740 N. Pulaski Road
29.	Arturo Del Real	1335 E. 63rd Street
30.	Alejandri Galeainao	1335 E. 63rd Street
31.	Jose J. Toledo	1335 E. 63rd Street
32.	Gonzalo Paniagua	6023 S. Stony Island
33.	Luisito Evangelista	3625 W. Roosevelt Road
34.	Delaver Aveiglu	103 East 35th Street
35.	F. Del Rio	3815 W. Kimbark
36.	Gordon Fuqua	2442 N. Burling
37.	Berj. Guayikian	3955 W. Roosevelt
38.	James E. Jones	5231 South Woodlawn
39.	Edilberto Hepomuceno	608 E. 63rd Street

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Transcript—*inter alia*:

[4] MR. WEINER: * * * The Clinical Laboratory Act of the State of Illinois requires that a hearing be granted prior to action such as the failure to renew a license or to not issue a new license, and it very clearly provides that, your Honor, and that Act was not complied with, nor was the plaintiffs given any rights that they were entitled to prior to a termination of business. This has cost the—and it continues to cost the plaintiff a substantial amount of money.

[20] THE COURT: * * * if there are some efforts being made to adjust any back bills and to see whether he should go back on the rolls, if that is being discussed.

* * * * *

I think that what he is seeking is within reach at the moment, or will be, * * *

[27] THE COURT: As I understand it, they were willing to give him a license and that was what you wanted from your TRO. Why don't you grab it?

MR. WEINER: Well, because the license would subject him to—the granting of this license would in essence be not the granting of a license. He would be precluded from operating under this license. Moreover, as to almost every aspect of this operation, including Medicare, * * *

[30] THE COURT: * * * under a new license it will cost him $50 more, not really a Federal case, * * *

[32] THE COURT: I thought your client was taking over the case, and it becomes more and more evident every time he appears in court here. He is unduly sensitive and doesn't rely on the competent counsel that he hired and now he is trying to run the case. Jimmy Hoffa tried that and he wound up in the penitentiary. Maybe that is where this guy will wind up.

[40] MR. WRIGHT: All I have asked this Honorable Court was, respectfully, to allow me to operate the Medical Laboratory with Medicare and Medicaid pending the proceeding of this case, that is all I had asked this Honorable Court, * * *

[38] THE COURT: You would like to withdraw from the case?

MR. WEINER: I would appreciate that, your Honor.

THE COURT: You certainly are entitled to.

Your client is endeavoring to prove and has successfully done so, that whoever represents himself has a fool for a client, especially if the client is a druggist. He may continue to represent his foolish client himself.

There will be no more hearings on a motion for a TRO or a preliminary injunction. Having obtained 97-1/2 per cent of the relief that he sought and all of the major relief that he sought, the matter is set for trial on the 4th of September.

You are given leave to withdraw.

MR. WRIGHT: Your Honor, am I permitted to say something?

THE COURT: What?

MR. WRIGHT: Am I permitted to say something?

THE COURT: I'll let you say this, you tell me when you are going to have a lawyer in here.

MR. WRIGHT: I am trying to make contact.

THE COURT: I know you have been trying to make–

MR. WRIGHT: From out of state.

[39] THE COURT: I am tired of listening to you. Get somebody, anybody. Go down to Manteno and see if there isn't an old lawyer down there. They do much better than you are doing for yourself.

MR. WRIGHT: You have not permitted me to say a word here, your Honor. Everything–

TH COURT: There has been so many words said in court and in chambers on pretrials–

MR. WRIGHT: Just one word, your Honor. My employee has submitted a questionnaire to the State of Illinois.

THE COURT: Has that happened? Is that right?

MR. WRIGHT: They probably have not received it, but they did submit it and, also, my attorney who says he is my attorney has never been my attorney for one month. He requested that you grant him permission, your Honor, to remain pending this agreement.

THE COURT: I hired this lawyer for you?

MR. WRIGHT: No, no, I am sorry if you misunderstood me, your Honor.

What I am saying is that this attorney requested here that he be allowed to stay in this case pending this stipulated agreement, but I had written to this attorney requesting that he withdraw one month ago from this case because his presentation was not satisfactory to [40] the plaintiff.

THE COURT: And I requested that he stay in to see if maybe giving you shock treatment or something like that in an institution might not result in you understanding what a fine agreement you got from the State of Illinois.

MR. WRIGHT: All I have asked this Honorable Court was, respectfully, to allow me to operate the Medical Laboratory with Medicare and Medicaid pending the proceeding of this case, that is all I had asked this Honorable Court, and this is what I also submitted in the motion for changing–

THE COURT: It is my understanding that you are willing to let him operate under the new rules until the matter is determined–the old rules?

MR. MONDIKE: Yes, your Honor.

THE COURT: Has he given you a clean check?

MR. MONDIKE: I am not aware of this your Honor. The only check that was sent–

THE COURT: You are not to let him do this until he gets a clean check. He wants to get the United Nations

and the World Court into it on the back of every check he signs, even though it is a $50 check.

MR. WRIGHT: We have submitted a check, your Honor.

[41] THE COURT: Well, if you have got a check and you submitted your employee's personnel–

MR. WRIGHT: They have also, your Honor.

THE COURT: You have got everything that you have sought in your TRO or preliminary injunction and that is why it was denied today. There will be a hearing on the merits on September 4th. I am certainly going to miss you fellows. Now get out of here.

(WHICH were all the proceedings had and taken on March 7, 1973.)

THIRTEEN (13) COUNTS OF UNCONSTITUTIONAL DEPRIVATIONS OF RIGHTS

Count #1 Suspension From Participating in the Illinois Department Medical Assistance Program, which is Arbitrary Capricious, Unreasonable, Discriminatory, Fraudulent, and an act of Conspirators, creating irreparable injury which would have assured a continuous income of over $95,000.00 pre-tax every year, and have caused a damage of private property of $5,000,000.00 (20h, 24h, 44-47h)

Count #2 Failure to afford a hearing prior to suspending participation in the Medical Assistance Program, which is an act of unlawful and unconstitutional exercise of Public Responsibility. (23h)

Count #3 Illegally seizing monies due and owing for medical laboratory services rendered under

contract, and entrusted under the care and custody of the defendants, is a criminal unlawful offense, in addition to Arbitrary, Capricious, Unreasonable, Discriminatory, Fraudulent in furtherance of the Conspiracy and contrary to Fiduciary Obligations which have increased the business lasting and continuous damages. (24h, 44-47h, 1-2h, 21-22h)

Count #4 Failure to afford a hearing with respect to the monies seized, which remains an outstanding debt for services performed under contract, which is an unlawful and Unconstitutional exercise of Public Responsibility and contrary to Fiduciary obligations. (23h, 44-47h)

Count #5 Breaching of the Contract, as an agent partly financied by the Federal Government having taken action contrary to fiduciary obligations is in violations of the laws and policy of the Federal Government. Such actions have created lasting and continuous damages to the business. (1-2h, 21-22h)

Count #6 Revocation of Hyde Park Medical Laboratory Inc., license (27-28h) on August 20, 1971, imposing termination of all business suddenly and abruptly threatening complete extinction of the business, disruption of its dealers and relations with physicians and contracts agreements causing irreparable damages in the sum of $5,000,000.00 to private property and irreparable injury of more than $95,000.00 pre-tax dollars income annually. Which action is Arbitrary, Capricious, Unreasonable, Discriminatory, Fraudulent and in further-

ance of the Conspiracy to eliminate the Company and its business. (1-2h, 3-7h, 21-22h)

Count #7 Failure to provide a hearing with respect to and prior to revocation of the aforesaid license, which is unlawful unconstitutional exercise of Public Responsibility and contrary to the State of Illinois Laws and Rules and Regulations and of the Illinois Clinical Laboratory act. Article VIII, Sections 8-102, 8-103 and 8-107. (8-9h)

Count #8 Terminating Medicare Participation and forcing a breach of contract as a result of the revocation of the license on August 20, 1971, was Arbitrary, Capricious, Unreasonable Discriminatory, Fraudulent and in furtherance of the Conspiracy, including great loss in damages. (21-22h, 1-2h, 27-28h)

Count #9 Failure to afford a hearing with respect to the termination of Medicare Participation is an unlawful and unconstitutional exercise of Public Responsibility.

Count #10 Denying a private Citizen of their right to own and operate a business without threatened extinction and wrongful and malicious interference, creating damages and threatening its elimination by illegal conspiracy which caused a loss of property value of $5,000,000. and a loss of income of more than $95,000. pre-tax dollars. (27-28h)

Count #11 Conducting false and illegal investigations without prior knowledge to the Company owner (petitioner herein) refusal to afford a conference to amicably resolve any misunder-

standing on the part of the defendants, instead submitted false fraudulent statements and complaints seeking and demanding illegal criminal prosecution without *affording a formal hearing* contrary to the laws. Further threatening the career of physicians the business must rely on for business, and damaging the good reputation of the (Petitioners) Company, such actions were Arbitrary Capricious, Unreasonable, Discriminatory and in furtherance of the conspiracy to fraudulently eliminate the Company and its business. (48-49h, 23h)

Count #12 Under disguise denying prior knowledge of the intent to incorporate and the actual incorporation of Hyde Park Medical Laboratory Inc., (petitioners herein) and making such statements under oath which has been proven to be an act of perjury. (See page 12, 13, 14)

Count #13 Failure to provide hearings prior to the above investigations inducing great and lasting irreparable harm and damages.

The above Thirteen (13) Counts of Unconstitutional Deprivations (Violation) of the Petitioners Constitutional Rights violates the following provisions:

U.S. Code Title 28 Section 1343
U.S. Code Title 42 Sections 1981, 1983, 1985, 2000d
Civil Rights Act of 1871
Civil Rights Act of 1964
Fifth Amendment of U.S. Constitution
Fourteenth Amendment of U.S. Constitution

Constitution of the State of Illinois
Article I, Section 1, Section 2, and Section 12
Article V, Section 15
Rules and Regulations
Illinois Clinical Laboratory Act, Rules and Regulations Section 8-102 and 8-103

LIBRARY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-691

HYDE PARK MEDICAL LABORATORY INC., an Illinois corporation and JAMES A. WRIGHT, individually and as the President, sole Shareholder and Director thereof,

Petitioners,

vs.

ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, HAROLD O. SWANK, EDWARD WEAVER, ROBERT G. WESSEL, PATRICK F. KAIN, FRANKLIN D. YODER, ROBERT G. BILSTEIN, R. F. SONDAG, DOUGLAS E. WADE, individually and as employees of the Illinois Department of Public Aid and Health,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

WILLIAM J. SCOTT,
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Attorney for Respondents.

BONNY SUTKER BAREZKY,
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130 North Wells Street, Suite 1700,
Chicago, Illinois 60606, 312-793-5635,

Of Counsel.

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TABLE OF CASES AND STATUTES INVOLVED

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IN THE

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OCTOBER TERM, 1973

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HYDE PARK MEDICAL LABORATORY INC., an Illinois corporation and JAMES A. WRIGHT, individually and as the President, sole Shareholder and Director thereof,

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ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, HAROLD O. SWANK, EDWARD WEAVER, ROBERT G. WESSEL, PATRICK F. KAIN, FRANKLIN D. YODER, ROBERT G. BILSTEIN, R. F. SONDAG, DOUGLAS E. WADE, individually and as employees of the Illinois Department of Public Aid and Health,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is unreported and is not included in the petition. However, the opinion of the Court of Appeals for the Seventh Circuit is in the Appendix. (Appendix A)

JURISDICTION-OBJECTIONS THERETO

Pursuant to Supreme Court Rule 23(1)(6) Petitioners have failed to include the mandatory statement of the grounds on which the jurisdiction of this Court is invoked. Additionally, it is clear that pursuant to Supreme Court Rule 19 (1) a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are "special and important" reasons therefor. Petitioners have not set forth reasons, special or otherwise, the character of which would require consideration by this Court according to the standards set forth in Supreme Court Rule 19 (1) (a) and (b). Petitioners merely set forth by citation various and sundry Statutes and Amendments without stating the grounds which may or may not require the jurisdiction of this Court to be invoked. Furthermore, the Statutes and Amendments cited are not at issue in this case. The District Court Judge denied petitioners' motion for preliminary injunction. The United States Court of Appeals, Seventh Circuit, decided only one issue, whether the District Court Judge abused his discretion in denying a preliminary injunction (See Appendix A, p. 23). The Statutes and Amendments cited shed no light on whether the District Court abused its discretion. There is nothing in the record to support consideration of these citations at this point in the litigation irrespective of whether this Court grants the writ for any other reason.

It is respectfully submitted that there are no "special and important" reasons for granting review on a writ of certiorari as contemplated by Supreme Court Rule 19. The issue raised by petitioners regarding a review of the District Court's decision based on the facts is purely factual and is of no legal moment. In accord with this proposition is *Moor* v. *Texas & N.O.R. Co.*, 297 U.S. 101, 80 L. Ed. 509, 56 S. Ct. 372 (1936), where the petitioners sought a preliminary injunction in a Federal District Court alleging a constitutional question. The District Court did not rule upon the constitutional question, but instead denied the injunction on the ground that it had not been shown that the petitioner would suffer irreparable injury for which he had no adequate remedy at law. The Court of Appeals affirmed the District Court's decree on the ground that a preliminary injunction was not to be granted as a matter of right, but was to be granted or refused in the exercise of sound judicial discretion. The Supreme Court dismissed the writ of certiorari, holding that in view of the record and of the wide discretion which the District Court was entitled to exercise, the writ of certiorari was improvidently granted.

We respectfully submit for the reasons stated above that jurisdiction to review this matter on certiorari should not be exercised.

QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court should review this case on a Petition for Certiorari where the only issue decided in the court below is whether the district judge abused his discretion in denying a preliminary injunction.

STATUTES INVOLVED

Supreme Court Rule 19

28 U.S.C.A. Supreme Court Rule 19:

PART V. JURISDICTION ON WRIT OF CERTIORARI

Rule 19. Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of cer-

tiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

Supreme Court Rule 23,

28 U.S.C.A. Supreme Court Rule 23:

Rule 23. The petition for certiorari

1. The petition for writ of certiorari shall contain in the order here indicated—

(a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in subparagraph (i) hereof.

(b) A concise statement of the grounds on which the jurisdiction of this court is invoked, showing:

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(ii) The date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to petition for certiorari; and

(iii) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari.

(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court.

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves, setting them out verbatim, and citing the

volume and page where they may be found in the official edition. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(e) A concise statement of the case containing the facts material to the consideration of the questions presented.

(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, then they shall be included in an appendix to the petition, which may, if more convenient, be separately presented.

(g) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 19.

(i) There shall be appended to the petition a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including all opinions of courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, opinions in companion cases. The opinions shall include the caption showing the name of the court or agency issuing the same and the title and numbers of the case and the date of their entry. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(j) If review of the judgment or decree of a state court is sought, there shall also be appended to the petition a copy of the judgment or decree in question and any order on rehearing; and, if review of the judgment or decree of a federal court is sought, there shall similarly be appended a copy of such judgment or decree and any order on rehearing, which may however be limited to the portions thereof sought to be reviewed. The judgments, decrees, or orders on rehearing shall include the caption showing the name of the court issuing the same, the title and number of the case, and the date of entry of such judgment, decree and order.

2. The petition for writ of certiorari shall be printed in conformity with Rule 39.

3. All contentions in support of a petition for writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (h) of paragraph 1 of this rule. No separate brief in support of a petition for writ of certiorari will be received, and the clerk will refuse to file any petition for writ of certiorari to which is annexed or appended any supporting brief.

4. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential

to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

5. Where several cases are sought to be reviewed on certiorari to the same court that involve identical or closely related questions, it shall suffice to file a single petition for writ of certiorari covering all the cases.

STATEMENT OF THE CASE

Petitioners' Statement of the Case, contrary to Supreme Court Rule 40 which requires that petitioners' brief contain a concise statement of the case and all that is material to consideration of the question presented, contains inference irrelevancy, and innuendo hardly material to the issue at bar. Statements are made without appropriate references to the appendix or to the record and indeed often are not supported by the record.

Respondents, therefore, submit the complete and unembellished Statement of the Case as set forth in the order of the Court of Appeals (See Appendix A). In pertinent part, the Statement of the Case is as follows:

> "This is an appeal from an order denying plaintiffs' motion for a preliminary injunction.
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> • • •
>
> Plaintiff, Hyde Park Medical Laboratory, Inc., a previously unincorporated clinical laboratory licensed pursuant to the Illinois Clinical Laboratory Act, Ill. Rev. Stat., ch. 111½ § 621-631, was incorporated on February 6, 1969. The licensing agency, the Illinois Department of Public Health, contends that it did not receive formal notice of the intent to incorporate or of the actual incorporation, although the plaintiffs have submitted a copy of a letter dated February 1, 1969, informing the Department that it was in the

process of incorporating, that the incorporation was for tax purposes only, and that there would be no change in technical supervision, ownership or location.

The laboratory's license was renewed for the years 1970 and 1971. On August 20, 1971, the plaintiff Wright was notified by the Department that because of the change in ownership he would have to complete a new license application. He was also requested to return his old license to be voided. The plaintiff refused to complete the application form which would have classified the laboratory as a "new" laboratory. Plaintiffs vigorously resist this designation because it would subject the laboratory to numerous rules and regulations and a new statute which are not applicable to laboratories licensed before passage of the new act whose licenses have been continually renewed.* The license application was finally completed and received by the Department of Public Health on September 5, 1972. After the standard investigation by the Department the new license was mailed to the plaintiff Wright but he has refused to accept it.

The complaint filed by Hyde Park Medical Laboratory, Inc., and James A. Wright, its sole shareholder, president, and director alleged that the plaintiffs' civil rights had been violated as a result of the arbitrary and discriminatory failure to renew the plaintiff's license and to restore participation in the Department's Medical Assistance Program. Numerous other civil rights violations were also alleged, including: failure to provide a hearing prior to the revocation of the license and suspension of participation in the Medical

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*The appellants' brief, prepared by plaintiff James A. Wright, acting pro se, does not contain a specific citation of the new rules, regulation, and statute to which the plaintiff laboratory would be subject under the "new" classification.

Assistance Program; failure to provide a hearing prior to submitting complaints about the plaintiff to the Attorney General, the State's Attorney of Cook County, and other government agencies, discrimination on the basis of race; failure to pay numerous bills for services performed, defamation, destruction of plaintiff's business and personal reputation; and a conspiracy to defeat the plaintiff's efforts to obtain a license.

It is not necessary to decide the numerous factual and legal issues raised by the plaintiffs' brief in this appeal, but merely to determine whether the district judge abused his discretion in denying a preliminary injunction.

From the transcript of the hearing on the motion for a preliminary injunction, it appears that the injunction was denied because the plaintiff Wright refused to sign a proposed stipulation for the entry of an order, to which both his counsel and the Attorney General had agreed. This order would have permitted the laboratory to operate under the rules and regulations for clinical laboratories and blood banks that were in effect prior to November 15, 1970, and would have required it to comply with rules and regulations regardless of their date of promulgation where such requirements would be applicable to all laboratories that were in operation prior to November 15, 1970. It also ordered the defendants to issue a new license and ordered the plaintiff to complete the necessary forms and pay the required fee for the issuance of the license. This proposed stipulation would have provided a reasonable accommodation of the conflicting interests while the factual and legal issues were being litigated in the district court. We find no abuse of discretion in the denial of a preliminary injunction on the basis of the plaintiff Wright's unreasonable refusal to consent to the proposed stipulation."

Accordingly, the judgment of the District Court was affirmed. Numerous dilatory motions ensued including: a motion directed to a three-judge panel to reopen the original appeal; a motion for rehearing; a motion for rehearing en banc; a motion for issuance of stay of mandate pending rehearing en banc; a motion for issuance of stay of mandate pending petition for Writ of Certiorari in the Supreme Court of the United States; and a motion to "review the appeal in view of additional and new evidence establishing overwhelming proof that the trial judge abused his discretion by failing to grant relief to proven wrongs," all of which motions were denied. It is from the affirmance of the order of the District Court denying a preliminary injunction that Petitioner now petitions this Court for Writ of Certiorari.

ARGUMENT

I.

THE UNITED STATES SUPREME COURT SHOULD NOT EXERCISE ITS DISCRETIONARY CERTIORRARY JURISDICTION SINCE IT IS MANIFEST THAT THE CASE PRESENTS NEITHER A SUBSTANTIAL FEDERAL QUESTION NOR A CONFLICT OF DECISIONS.

Pursuant to Supreme Court Rule 19, it is clear that a review on Writ of Certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor. The character of reasons which will be considered are set forth in Supreme Court Rule 19 and are essentially where a case presents a substantial Federal question or a conflict of decisions. Petitioner alleges that the reason this Court should grant the writ is because there are "very important questions of Federal Law which should be settled by this Court." (See Petition, p. 15). Within the body of the argument petitioner also alleges conflicting opinions in the United States Courts of Appeals. (See Petition, pp. 18, 19, and 20). We respectfully submit that the Petition contains no argument to substantiate these allegations. As Mr. Chief Justice Taft stated:

> " . . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. The present case certainly comes under neither head." *Layne & Bowler*

Corp. v. *Western Well Workes, Inc.*, (1923) 261 U.S. 387, 393, 67 L. Ed. 712, 714, 43 S. Ct. 422.

As to petitioner's allegation of an important question of federal law, petitioner's arguments cites no important question which has not already been settled by this Court. Indeed, petitioner's argument renders lip service to various federal statutes without any foundation relating to the issue on this appeal. Pursuant to Supreme Court Rule 23 (4), the failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition. Petitioner's brief is replete with confabulations, misrepresentations, and distortions of the facts in addition to vilification of respondents herein all having nothing to do with the issue of this case. Petitioner approaches the only issue in this case in a variety of unusual ways; however, regardless of petitioner's misconstruction and extravaganza, the one issue to be decided by this Court consistently remains: whether the trial court abused its discretion in denying a motion for preliminary injunction. This is hardly an important question of Federal Law. The proper use of judicial discretion in this area is not repugnant to ANY case law, Federal or otherwise. Petitioner has not demonstrated the manner in which the discretion exercised by the trial court and the court of review have been contrary to Federal Law or to decisions in this or any other court.

The infinite variety of situations in which a court of equity may be called upon for injunctive relief requires that the court have considerable discretion in granting or denying such relief. A preliminary injunction is an extraordinary and far-reaching remedy, the granting of

which is wholly within the discretion of the court as it views the particular facts of each case. If, however, there is any class of cases which plainly falls outside the professed considerations by which the Supreme Court exercises its discretionary juridicion, it is cases involving only the interpretation of the facts bearing on the issue. In those cases, as in the case at bar, the significance of facts becomes the bone of contention. Cases involving only an interpretation of conflicts in the evaluation of facts bearing on the issues are not within the considerations by which the Supreme Court exercises its discretionary jurisdiction.

The scope of inquiry on an appeal from denial of a preliminary injunction is limited exclusively to the question of whether the court below abused its discretion. *Kontes Glass Co.* v. *Lab Glass, Inc.*, C.A.N.J. 1967, 373 F. 2d 319; *Copeland* v. *South Bend Community School Corp.*, C.A. Ind. 1967, 376 F. 2d 585. The discretion of the court to grant or deny a preliminary injunction is subject to reversal *only* for abuse of discretion. *Jones* v. *Snead*, C.A. Mo. 1970, 431 F. 2d 1115; *Com-Share, Inc.* v. *Computer Complex, Inc.*, C.A. Mich. 1972, 458 F. 2d 1341. The District Court has wide discretion to issue or withhold a temporary injunction and ordinarily the Court of Appeals will not interfere. *Newbern* v. *Lake Lorelei, Inc.*, D.C. Ohio 1968, 308 F. Supp. 407; *Hulburt Oil & Grease Co.* v. *Hulburt Oil & Grease Co.*, C.A. Ill. 1965, 346 F. 2d 260, cert. den. 86 S. Ct. 78, 382 U.S. 835, 15 L. Ed. 2d 77. As can be seen from the order of the Court of Appeals below, where an appeal from an Order denying a preliminary injunction is taken, the Court will not consider the merits of the case further than is necessary to determine whether there has been an abuse of discretion. See *Hornback* v.

Brotherhood of R. R. Signalmen, C.A. Ky. 1965, 346 F. 2d 161. The discretion of the trial court must clearly be abused before Appellate Courts will reverse for failure to grant a preliminary injunction. *U.S.* v. *Board of Ed. of Greene County, Miss.,* C.A. Miss. 1964, 332 F. 2d 40. Since the discretion of the trial court is broad, and a strong showing of abuse must be made to reverse it (See *Detroit Football Co.* v. *Robinson,* C.A. La. 1960, 283 F. 2d 657) it is clear that the Appellate Court was correct in affirming the decision of the District Court. Petitioner has made no showing of judicial abuse and, indeed, the Appellate Court found none to exist.

There are four factors to be weighed in considering a motion for preliminary injunction:

1. A substantial question must be in issue.
2. There must be a strong probability of plaintiff's success on the merits.
3. The Court must balance the injuries to the parties.
4. Where appropriate, the public interest (which is of paramount importance) must be considered.

Environmental Defense Fund v. *T.V.A.,* D.C. Tenn. 1972, 339 F. Supp. 806. With those factors as a springboard, other considerations are also necessary. Injunctions should be issued sparingly due to their extraordinary nature. A Plaintiff must make a "clear and convincing showing" that he is entitled to the drastic relief of an injunction pending litigation. *Heyman* v. *Ar. Winarick, Inc.,* D.C. N.Y., 1958, 166 F. Supp. 880. Petitioner has not shown clearly or convincingly that he is entitled to a preliminary injunction according to the standards above. Petitioner asked the Court below to ignore the fact that there was a change of ownership by his incorporation and to allow

him to continue working under his old license by granting the injunction. Such incorporation clearly rendered petitioner's license invalid. (See Petition Appendix, p. 12-H). Since a preliminary injunction is an equitable remedy it is not granted where parties lack clean hands. *Clairol, Inc.* v. *Gillette Co.*, D.C. N.Y. 1967, 270 F. Supp. 371, aff'd. 389 F. 2d 264. Petitioner, having failed to comply with the provisions of his license, now asks this Court to consider anew issues already considered by the District Court and found to be correctly decided by the United States Court of Appeals.

Furthermore, regardless of petitioner's posture in this case, a preliminary injunction should not be issued in a doubtful case, unless the Court is convinced with reasonable certainty that the complaint must succeed at a final hearing. *Erie Lackawanna Ry. Co.* v. *Lighter Captains Union, Local 996, I.L.A.*, D.C.N.J. 1972, 338 F. Supp. 955. The record in this case indicates that conflicting interpretations of fact are in issue. The case can only be resolved at trial and therefore the preliminary injunction could not have been granted. *Tropic Film Corp.* v. *Paramount Pictures Corp.*, D.C.N.Y. 1970, 319 F. Supp. 1247. Where sharp issues of fact are presented, such as here, the case is not a fit one for preliminary relief and resolution of the disputed issues must await trial. *Gianni Cereda Fabrics, Inc.* v. *Bazaar Fabrics, Inc.*, D.C.N.Y. 1971, 335 F. Supp. 278. The requirement that there be an absence of serious dispute between parties as to facts alleged and the law applicable is not so much a separate criterion for granting a preliminary injunction as it is a recognition of the movant's burden of proof and the reluctance of Courts to decide novel questions of law on less than a complete record.

It is well settled that the party moving for a preliminary injunction carries the burden of convincing the Court that he is entitled to it. *Bowers* v. *Columbia General Corp.*, D.C. Del. 1971, 336 F. Supp. 609. He has the burden of establishing his likelihood of success on the merits; that it, of raising questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for litigation and thus for more deliberate investigation. *Canty* v. *Board of Ed., City of N.Y.*, D.C.N.Y. 1970, 312 F. Supp. 254. Petitioner has never sustained his burden of establishing a likelihood of success on the merits according to the criteria above. He merely states "the petitioner's condition supports granting the relief since they are sure to prevail on the merits of this case." (See Petition, p. 16). No argument is offered as to the reason they are "sure to prevail." Mere citations of various statutes and constitutional provisions, without a showing of their relation to the case, do not explain to the Courts or respondents why petitioner is entitled to any relief whatsoever. Petitioner's disdain for the ordinary processes of judicial decision and government are exhibited throughout the argument. See Petition, e.g. p. 19: "The trial Judge was confused and never understood the issue before the Court or appreciated the complex and extraordinary legal position of the petitioners." If such was indeed the case, then the Court of Appeals must also have been "confused." Furthermore, petitioner has gone through every possible motion, including motions heretofore unheard of in order to delay the processes of judicial decision and government. As Mr. Frankfurter stated for the Supreme Court, there is a

> "process by which the wheat of worthy petitions for certiorari is sifted from the vast chaff of cases for which review is sought here, too often because

> of the blind litigiousness of parties or of the irresponsibility and excessive zeal of their counsel." *United States* v *Shannon*, (1951) 342 U.S. 288, 295, 96 L. Ed. 321, 328, —— S. Ct. ——.

Petitioner is clearly entitled to appeal a decision of the District Court denying a motion for preliminary injunction. Appeals are a matter of right, however, while the Supreme Court's *certiorari* decisions are wholly discretionary. *Durham* v. *U.S.*, 1971, 91 S. Ct. 858, 401 U.S. 481, 28 L. Ed. 2d 200.

Certiorari should not be granted except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the private parties herein, or, in cases where there is a real and embarrassing conflict of opinion and authority between Courts of Appeal. (See *Rice* v. *Sioux City Memorial Parks Cemetery*, 1955, 75 S. Ct. 614, 349 U.S. 70, 99 L. Ed. 897). It is respectfully submitted that since the only issue in this case is whether the District Court abused its wide discretion, it presents neither a substantial Federal question nor a conflict of decisions and the United States Supreme Court should not exercise its certiorari jurisdiction.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Of Counsel.

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
July 10, 1973.

Before

Hon. *LUTHER M. SWYGERT, Chief Judge*
Hon. *ROGER J. KILEY, Circuit Judge*
Hon. *ROBERT A. SPRECHER, Circuit Judge*

HYDE PARK MEDICAL LABORATORY, INC., and JAMES A. WRIGHT,

Plaintiffs-Appellants,

No. 73-1242 vs.

ILLINOIS DEPARTMENT OF PUBLIC AID, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 72 C 2385
Richard B. Austin, *Judge.*

ORDER

This is an appeal from an order denying plaintiffs' motion for a preliminary injunction. The defendants-appellees have moved for affirmance without oral argument, pursuant to Circuit Rule 22. We have examined the briefs and the record on appeal and have concluded that the questions presented by the appellants' brief are insubstantial.

Plaintiff, Hyde Park Medical Laboratory, Inc., a previously unincorporated clinical laboratory licensed pursuant to the Illinois Clinical Laboratory Act, Ill. Rev. Stat. ch. 111-½ § 621-631, was incorporated on February 6, 1969. The licensing agency, the Illinois Department of Public Health, contends that it did not receive formal notice of the intent to incorporate or of the actual incorporation, although the plaintiffs have submitted a copy of a letter dated February 1, 1969, informing the Department that it was in the process of incorporating, that the incorporation was for tax purposes only, and that there would be no change in technical supervision, ownership or location.

The laboratory's license was renewed for the years 1970 and 1971. On August 20, 1971, the plaintiff Wright was notified by the Department that because of the change in ownership he would have to complete a new license application. He was also requested to return his old license to be voided. The plaintiff refused to complete the application form which would have classified the laboratory as a "new" laboratory. Plaintiffs vigorously resist this designation because it would subject the laboratory to numerous rules and regulations and a new statute which are not applicable to laboratories licensed before passage of the new act whose licenses have been continually renewed.* The license application was finally completed and received by the Department of Public Health on September 5, 1972. After the standard in-

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* The appellants' brief, prepared by plaintiff James A. Wright, acting pro se, does not contain a specific citation of the new rules, regulation, and statute to which the plaintiff laboratory would be subject under the "new" classification.

vestigation by the Department the new license was mailed to the plaintiff Wright but he has refused to accept it.

The complaint filed by Hyde Park Medical Laboratory, Inc., and James A. Wright, its sole shareholder, president, and director alleged that the plaintiffs' civil rights had been violated as a result of the arbitrary and discriminatory failure to renew the plaintiff's license and to restore participation in the Department's Medical Assistance Program. Numerous other civil rights violations were also alleged, including: failure to provide a hearing prior to the revocation of the license and suspension of participation in the Medical Assistance Program; failure to provide a hearing prior to submitting complaints about the plaintiff to the Attorney General, the State's Attorney of Cook County, and other government agencies, discrimination on the basis of race; failure to pay numerous bill for services performed, defamation, destruction of plaintiff's business and personal reputation; and a conspiracy to defeat the plaintiff's efforts ot obtain a license.

It is not necessary to decide the numerous factual and legal issues raised by the plaintiffs' brief in this appeal, but merely to determine whether the district judge abused his discretion in denying a preliminary injunction.

From the transcript of the hearing on the motion for a preliminary injunction, it appears that the injunction was denied because the plaintiff Wright refused to sign a proposed stipulation for the entry of an order, to which both his counsel and the Attorney General had agreed. This order would have permitted the laboratory to operate under the rules and regulations for clinical laboratories and blood banks that were in effect prior to November 15, 1970, and would have required it to comply with rules and regulations regardless of their date of promulgation

where such requirements would be applicable to all laboratories that were in operation prior to November 15, 1970. It also ordered the defendants to issue a new license and ordered the plaintiff to complete the necessary forms and pay the required fee for the issuance of the license. This proposed stipulation would have provided a reasonable accommodation of the conflicting interests while the factual and legal issues were being litigated in the district court. We find no abuse of discretion in the denial of a preliminary injunction on the basis of the plaintiff Wright's unreasonable refusal to consent to the proposed stipulation. Accordingly,

IT IS ORDERED that the motion to affirm without oral argument be and the same is hereby granted and the judgment of the district court is AFFIRMED.